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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

ADTRADER, INC., CLASSIC AND  
FOOD EOOD, LML CONSULT LTD.,  
AD CRUNCH LTD., FRESH BREAK  
LTD., AND SPECIALIZED  
COLLECTIONS BUREAU, INC.

Plaintiffs,

v.

GOOGLE LLC.

Defendant.

Case No. 5:17-CV-7082-BLF

**AMENDED CLASS ACTION  
COMPLAINT**

DEMAND FOR JURY TRIAL

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1 Plaintiffs AdTrader, Inc. (“AdTrader”), Classic and Food EOOD (“Classic”), LML  
2 CONSULT Ltd. (“LML”), Ad Crunch Ltd. (“Ad Crunch”), Fresh Break Ltd. (“Fresh Break”),  
3 and Specialized Collections Bureau, Inc. (“SCB”) (collectively, “Plaintiffs”) hereby make the  
4 following allegations against defendant Google LLC (“Google”):

### 5 INTRODUCTION

6 1. This is an individual action brought by AdTrader against Google for its failure to  
7 honor its commitment to pay AdTrader its share of the ad revenue that Google received for  
8 placing ads on AdTrader’s publishers’ websites through the DoubleClick Ad Exchange (“AdX”).

9 2. This is also a class action brought by Plaintiffs on behalf of advertisers against  
10 Google for its fraudulent promises that it would issue refunds or credits to advertisers for invalid  
11 activity on their advertisements served through AdX.

12 3. For years, Google has refused to pay AdX publishers their accrued revenues,  
13 claiming that it would return that money to advertisers because of some purported violation of  
14 Google policy by those publishers. As it turns out, Google never returned that money to many of  
15 those advertisers. Instead, Google simply pocketed the money, bilking both the advertisers who  
16 paid Google to deliver their ads and the AdX publishers who displayed those ads.

17 4. Google’s fraudulent practice is best evidenced by the unfortunate experience of  
18 AdTrader. AdTrader is a company that helps website publishers display ads on their websites  
19 through on-line advertising platforms, including AdX. After using AdX for years without issue,  
20 in May 2017, Google abruptly disabled AdTrader’s AdX account without providing a coherent  
21 reason, and withheld close to \$500,000 in accrued AdX earnings from AdTrader. When  
22 AdTrader pressed for the payments owed to it and its clients, Google responded the same way it  
23 has to hundreds of thousands of publishers for many years – that it could not and would not make  
24 any payments to AdTrader because it had already made the decision to refund all of AdTrader’s  
25 withheld earnings back to the advertisers whose advertisements were displayed on the websites of  
26 AdTrader’s clients.

27 5. What Google apparently forgot, however, was that AdTrader also helps companies  
28 place on-line advertisements on various advertising platforms, including AdX. And so Google

1 did not know that AdTrader and its advertising clients, using a Google product called  
2 DoubleClick Bid Manager (“DBM”), had placed some of the AdX advertisements that ran on the  
3 websites of AdTrader’s publishers. DBM is the largest demand-side platform in the world and is  
4 used to run ad campaigns for advertisers. A demand-side platform provides media buyers (such  
5 as advertisers, agencies, trading desks, etc.) with centralized access to multiple ad exchanges and  
6 networks where they can bid for their desired inventory. Thus, Google’s explanation that it had  
7 refunded all of AdTrader’s withheld earnings back to Google’s advertisers rang false, **because**  
8 **neither AdTrader nor its advertising clients received any refunds from Google.**

9           6. Google’s false explanation caused AdTrader to investigate, and its records showed  
10 that for the several years it had advertisements on AdX, **it had never received a single cent as a**  
11 **refund (or credit) from Google when using DBM.** AdTrader had never received any refunds  
12 even though, as it turns out, Google always withheld a small amount of accrued earnings from all  
13 of its AdX publishers for what Google claimed to be invalid activity – amounts that Google also  
14 claimed to have refunded back to its advertisers. If Google truly was providing its advertisers  
15 with refunds or credits of the amounts it withheld from its publishers on the purported grounds of  
16 invalid activity, then AdTrader necessarily would have received some refunds or credits every  
17 month when using DBM.

18           7. AdTrader also inquired with other advertisers that used DBM to place ads through  
19 AdX to see if they had ever received a refund or credit on their ads. None of them had. Google  
20 did not pay anything out to its AdX publishers for those amounts it withheld from them for  
21 supposedly invalid impressions, but also did not refund those amounts back to advertisers.  
22 Instead, Google confiscated the money for itself.

23           8. The falsity of Google’s prior representations was publicly exposed by the Wall  
24 Street Journal in an article dated August 25, 2017. In that article, advertisers that used DBM  
25 revealed that Google did not refund the full cost they paid for ads served to invalid traffic (and  
26 was withheld from publishers). Instead, Google offered to refund only a fraction of that cost—a  
27 mere 7 to 10 percent of what advertisers had paid Google. Google claimed that “this was  
28 appropriate because it doesn’t control the rest of the money spent.” This is not a true statement,

1 as in most situations, Google does control everything about how the money is spent. Most of the  
2 advertisers referenced in the Wall Street Journal article had their advertisements displayed on the  
3 websites of AdX and AdSense publishers, and thus for those advertisers, Google had complete  
4 control over how much of their advertising spend was remitted to publishers and how much was  
5 retained by Google itself. And for those advertisers that had their ads displayed on the websites  
6 of AdX and AdSense publishers with supposedly invalid traffic, Google actually kept all of these  
7 funds for itself rather than refund them back to advertisers.

8 9. Exactly one week after the Wall Street Journal article was published, Google made  
9 sweeping changes to its contract terms with some of those advertisers (in fact, the millions of  
10 advertisers that use Google AdWords) in an attempt to prevent them from filing any lawsuits  
11 against Google for its fraud.

12 10. Thus, on behalf of all advertisers who had their advertisements displayed on the  
13 websites of AdX publishers, Plaintiffs bring this action to recover all monies that Google  
14 withheld from those AdX publishers for displaying the ads, but did not refund to those  
15 advertisers. Back in 2014, a leading adtech company had estimated that AdX collectively  
16 generated \$1 million per hour in revenue for all of its publishers, which would mean that Google  
17 has been unjustly enriched by tens of millions of dollars to hundreds of millions of dollars, each  
18 year, by retaining instead of refunding amounts spent by advertisers on AdX on what Google  
19 claimed to be invalid impressions.

20 11. AdTrader also brings this action on behalf of itself to recover the amounts that it  
21 had earned for displaying AdX advertisements, but that Google ultimately did not pay. Under the  
22 contract between Google and its AdX publishers, Google can withhold payment of an AdX  
23 publisher's accrued earnings only if (i) such earnings were the product of invalid activity and (ii)  
24 the withheld amounts are refunded to the advertisers. Evidence uncovered by AdTrader,  
25 however, reveals that when Google decides that ad impressions generated on an AdX publisher's  
26 website were invalid and withholds that publisher's accrued earnings as a result, Google is not  
27 refunding that withheld amount back to advertisers. Instead, Google keeps those funds for itself  
28 in violation of its contractual obligations with AdTrader.

12. In the end, Google's wrongful actions mean that the monies in question belong to both AdTrader (as a publisher) and to all the advertisers. Google has an obligation to provide refunds to advertisers for any ad impressions that Google deems to have been invalid, and Google did not do this. Google also has an obligation to pay AdTrader for any accrued AdX earnings that Google did not refund back to advertisers, and Google did not do this either. Thus, this lawsuit is intended to force Google to disgorge its ill-gotten gains and change its unjust practices.

### **PARTIES**

13. Plaintiff AdTrader, Inc. is a Nevada corporation that has its principal place of business in New Jersey. AdTrader, Inc. was formerly known as AdTradr Corporation, and had contracted with Google under that name.

14. Plaintiff Classic and Food EOOD is a Bulgarian company that has its principal place of business in Bulgaria.

15. Plaintiff LML CONSULT Ltd. is a Bulgarian company that has its principal place of business in Bulgaria.

16. Plaintiff Ad Crunch Ltd. is a Bulgarian company that has its principal place of business in Bulgaria.

17. Plaintiff Fresh Break Ltd. is a Bulgarian company that has its principal place of business in Bulgaria.

18. Plaintiff Specialized Collections Bureau, Inc. is a California corporation that has its principal place of business in Los Angeles, California.

19. Defendant Google LLC is a Delaware limited liability company that has its principal place of business in California. Google LLC was formerly known as Google, Inc. at the time the parties first contracted with each other, but was subsequently converted to its current business form.

### **JURISDICTIONAL STATEMENT**

20. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2). If a class is certified in this action, the amount in controversy will exceed \$5,000,000.00, exclusive

1 of interest and costs, and this is a class action in which at least one member of the class is a  
2 citizen of a state different from any defendant.

3 21. The Court has personal jurisdiction over Google because it transacts business in  
4 California and because in the Google Services Agreement, it expressly consents to personal  
5 jurisdiction in this Court.

6 22. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Google  
7 resides and regularly conducts business in this district, and because the contracts with Google at  
8 issue in this lawsuit have forum selection clauses requiring that litigation of all disputes is  
9 handled in the state or federal courts of Santa Clara County, California.

#### 10 **INTRADISTRICT ASSIGNMENT**

11 23. Google's headquarters is located in Mountain View, California, and therefore  
12 assignment to the San Jose division of this Court is appropriate.

#### 13 **FACTUAL ALLEGATIONS**

##### 14 ***Background on DoubleClick Ad Exchange (AdX)***

15 24. Google is the largest online marketing/advertising business in the world. The  
16 AdWords Advertising Program ("AdWords") is Google's primary advertising program.  
17 AdWords advertisements are displayed in a variety of formats such as text and/or images,  
18 alongside or above search results, on webpages, in e-mails, on blogs, and/or in videos.

19 25. The Google AdSense Content program enables online publishers of websites to  
20 partner with Google to earn revenue from AdWords advertisements displayed on websites under  
21 their ownership, license, registration and/or other control. Google tracks each time Internet users  
22 click on advertisements displayed on AdSense publishers' websites and charges advertisers for  
23 each click. Google pays the AdSense publishers a portion of the amount paid by advertisers for  
24 the clicks, while retaining the remaining portion for itself.

25 26. Like AdSense, DoubleClick Ad Exchange also allows website publishers to  
26 display advertisements in exchange for a share of the advertising revenue paid to Google by the  
27 advertiser for each "impression" (i.e., each time a unique user views the publisher's website  
28 displaying an advertisement served to that website through AdX).



1           27.     AdX differs from AdSense in that it is a programmatic, real-time bidding exchange  
2 that allows publishers and advertisers to exercise far more granular control over what  
3 advertisements are displayed and how much is paid by the advertiser to display those  
4 advertisements. It also allows advertisers from outside of the Google Display Network to buy  
5 inventory from the publisher, thus significantly increasing the demand.

6           28.     Advertisers can buy ad space on AdX through DoubleClick Ad Exchange Buyer  
7 (“AdX Buyer”), as well as DBM (which is Google’s demand-side platform). AdX is an ad  
8 exchange, which means that it consolidates advertising demand from AdWords and other ad  
9 networks, exchanges, and demand-side platforms (such as DBM) to participating AdX publishers.  
10 Thus, for example, DBM and AdWords advertisers can end up buying ad space on the website of  
11 an AdX publisher.

12           29.     Advertisers can also end up buying space on AdX even without their knowledge.  
13 The default setting for an advertiser’s AdWords campaign is to have the advertiser participate in  
14 the Google Display Network. When this setting is left alone, Google’s algorithms will  
15 automatically display an AdWords advertiser’s advertisements on an AdX publisher’s website,  
16 when the price offered by those publishers meets certain pre-determined criteria set in advance by  
17 that AdWords advertiser.

18           30.     In layman’s terms, advertisers have advertisements that they wish to display on  
19 websites and publishers have “inventory” (i.e., ad spaces on their websites) that can accommodate  
20 the display of those advertisements. AdX facilitates these two groups transacting together for  
21 their mutual benefit.

22           31.     AdX is viewed by industry participants as a more sophisticated ad placement  
23 service compared to AdSense, and therefore attracts more experienced and/or larger publishers.

24           32.     Google offers a suite of DoubleClick products to assist publishers and advertisers  
25 in utilizing AdX. Some of these products include DoubleClick for Publishers and DBM, among  
26 others. DoubleClick for Publishers is primarily used as an ad server to help publishers monetize  
27 their inventory. DBM is the largest demand-side platform in the world and is used to run ad  
28 campaigns for advertisers. As previously alleged, a demand-side platform provides media buyers

1 (such as advertisers, agencies, trading desks, etc.) with centralized access to multiple ad  
2 exchanges and networks where they can bid for their desired inventory. DBM consolidates  
3 inventory from AdX, AdSense, and other ad exchanges. In other words, an advertiser can use  
4 DBM to buy inventory on both AdX and also on non-Google controlled ad exchanges. Most  
5 transactions end up consummated on a Google platform because Google controls a large share of  
6 the online advertising market.

7 33. Though advertisers have the option of buying ad space on AdX through either  
8 AdX Buyer or DBM, the vast majority of ad space is bought through DBM, because of its  
9 flexibility compared to AdX Buyer.

10 34. Another feature of AdX is that Google allows businesses to participate on the  
11 publishing side even if they do not have their own website, but as managers of websites belonging  
12 to others. Google calls such entities Network Partner Managers (“NPM”). Essentially, NPMs  
13 help Google manage smaller publishers and penetrate in new markets. NPMs also help Google  
14 gain additional market share with its existing clients. AdTrader was an NPM.

15 35. Due to the sophisticated features offered by AdX, website content creators often  
16 engage NPMs to focus on optimizing the revenue earned from Google advertisements placed on  
17 their websites (usually by selling ad space at the highest possible price), while those website  
18 content creators focus instead on content creation.

19 36. These websites will accordingly be registered in the AdX program under the AdX  
20 account belonging to the NPM, but may also be simultaneously registered in the AdX program  
21 under their own AdX account (or may also be registered in the AdSense program under their own  
22 account there).

23 37. Similarly, Google allows businesses to participate in AdX on the advertising side  
24 even if they do not have any advertisements of their own to place, but as managers of advertisers  
25 seeking to place advertisements through DBM. This is because much like AdX is a more  
26 sophisticated product than AdSense, DBM is a more sophisticated product than AdWords. DBM  
27 provides more granular control and access to more inventory compared to AdWords. It is also  
28 more difficult to manage and also requires a high minimum monthly ad spend to access the

1 platform. Thus, smaller and mid-size advertisers typically work with business entities familiar  
 2 with DBM rather than navigate the platform on their own, especially since their individual  
 3 advertising budgets are not large enough to meet the minimum monthly ad spend requirement for  
 4 DBM.

5 38. Google calls such managing entities “advertising agencies,” or “advertising  
 6 networks.” An advertising agency / network would have one or more “seats” of its own on DBM.  
 7 A small or mid-size advertiser would pay the advertising agency / network to use the latter’s  
 8 “seat” on DBM to place ads on various publishers’ websites (usually an AdX publisher). These  
 9 small or mid-size advertisers would not have any contracts with Google, but only with the  
 10 advertising agency / network.

11 39. AdTrader was also classified by Google as an advertising agency, and then  
 12 subsequently re-classified as an advertising network. Thus, AdTrader (using DBM) would buy ad  
 13 space on publisher websites on behalf of its advertising clients, and Google would charge  
 14 AdTrader for ad impressions on those websites. AdTrader would advance those costs on behalf  
 15 of its advertising clients and then get reimbursed for them by those clients. On many occasions,  
 16 however, AdTrader was not reimbursed by a client or was not reimbursed in full. Thus, to the  
 17 extent that Google ever overcharged its advertisers, AdTrader sometimes bore the brunt of those  
 18 overcharges and had to eat those costs itself.

19 40. The Google Services Agreement, which AdTrader entered into, governs the  
 20 relationship between AdX publishers and Google. A true and correct copy of this contract is  
 21 attached hereto as Exhibit 1. The primary obligations of a publisher are set forth in Section 2.3 of  
 22 the agreement, which requires that an AdX publisher adhere to Google’s published AdX  
 23 Guidelines and Google’s technical protocols.

24 41. The Google Services Agreement also provides the following policies and  
 25 procedures for Google’s payments to AdX web publishers:

26 **Section 8.2: Google Payments**

27 (a) For the Services, Google will pay Company an amount equal to the Revenue Share  
 28 Percentage (listed on the front page of this Agreement) of Ad Revenues attributable to a  
 calendar month. This payment will be made in the month following the calendar month in

which the applicable Ads were displayed provided that the amount owed to Company in a given month is above the minimum set forth in the AdX Guidelines.

(b) Google's payments for the Services under this Agreement will be based on Google's accounting which may be filtered to exclude (i) invalid queries, impressions, conversions, or clicks, and (ii) any amounts refunded to advertisers in connection with Company's failure to comply with this Agreement, as reasonably determined by Google.

42. Moreover, the Google Services Agreement lays out specific grounds for Google to terminate an AdX publisher's account. The entirety of these grounds are as follows:

**Section 13.2: Termination**

(a) Either party may terminate this Agreement with notice if the other party is in material breach of this Agreement:

(i) where the breach is incapable of remedy;

(ii) where the breach is capable of remedy and the party in breach fails to remedy that breach within 30 days after receiving notice from the other party; or

(iii) more than twice even if the previous breaches were remedied.

(b) Either party may terminate this Agreement for any or no reason upon 30 days prior notice to the other party.

(c) Google reserves the right to suspend or terminate Company's use of any Services that are alleged or reasonably believed by Google to infringe or violate a third party right. If any suspension of a Service under this subsection 13.2(c) continues for more than 6 months, Company may immediately terminate this Agreement upon notice to Google.

(d) Google may terminate this Agreement immediately with notice if pornographic content that is illegal under U.S. law is displayed on any Site.

43. The DoubleClick Ad Exchange Master Service Agreement ("DoubleClick Ad Exchange Agreement"), which AdTrader entered into on or around June 19, 2014, is the primary contract that governs the relationship between advertisers using AdX Buyer and Google, as executing this agreement is a prerequisite to buy on AdX through DBM. A true and correct copy of this contract is attached hereto as Exhibit 2.

44. AdTrader, like some other advertisers using AdX Buyer, also entered into the DoubleClick Advertising Platform Agreement ("DoubleClick Advertising Agreement") on March 1, 2016 in order to utilize certain specific DoubleClick products. A true and correct copy of this contract is attached hereto as Exhibit 3.



1 AdTrader performed its obligations under the Google Services Agreement, and ensured that its  
2 publisher clients performed their obligations under the Google Services Agreement. AdTrader  
3 and its publisher clients properly displayed Google's advertisements in conformity with Google's  
4 policies, did not display any impermissible content on their websites, and otherwise performed all  
5 of their required contractual duties.

6 52. Similarly, AdTrader and its advertising partners always performed their  
7 obligations under the DoubleClick Ad Exchange Agreement, the DoubleClick Advertising  
8 Agreement, and the AdWords Agreement. The primary contractual responsibilities of advertisers  
9 under these agreements were to (i) pay Google (ii) not offer advertisements that violated Google's  
10 content guidelines, and (iii) not embed malware in those advertisements. AdTrader and its  
11 advertising partners had no problems carrying out these contractual duties.

12 53. AdTrader was also one of the larger NPM publisher accounts participating in AdX.  
13 As such, over the course of this multi-year relationship, Google account managers would  
14 regularly keep track of AdTrader's month-over-month growth, challenges, goals, and future plans  
15 through quarterly reports.

16 54. Google account managers would also communicate with AdTrader employees (in  
17 phone calls, e-mails, on-line chats, and live meetings) about how to properly utilize the various  
18 DoubleClick products. In these discussions, Google would reassure AdTrader that AdTrader and  
19 its publishers were complying with all of Google's policies, and would continue to be in  
20 compliance if they followed the implementation and optimization measures suggested by those  
21 employees. (Meaning that Google employees would recommend to AdTrader to implement new  
22 layouts, such as ad units or ad formats, or advertisement placement strategies for their publisher  
23 websites that would be more effective at generating revenue from those advertisements.) Google  
24 employees also considered AdTrader to be such a well-managed account that they would refer  
25 other AdX publishers to AdTrader for help and advice.

26 55. For example, for much of 2016 and 2017, AdTrader's assigned account manager  
27 was a Google employee named Balint Torok. Mr. Torok spoke to AdTrader employees on a  
28 regular basis, and reassured them that AdTrader's publishers' websites had high quality traffic.

1 Trying to be helpful, Mr. Torok would also sometimes tell AdTrader employees the percentage of  
2 invalid impressions that AdTrader's publishers had for each billing period, and based on those  
3 representations, it appeared that only 0.15% - 0.2% of AdTrader's estimated revenue for the  
4 average billing period was the product of invalid activity (and accordingly deducted). Mr. Torok  
5 said that this was an exceptionally low number compared to the vast majority of other AdX  
6 publishers, as the average amount of invalid activity on an AdX publisher website was usually  
7 several percentage points.

8 56. Also, in February 2017, AdTrader employees were invited by Google to attend the  
9 Mobile World Congress in Barcelona. During this event, AdTrader employees spoke to Google  
10 employees Anthony Nakache (the Director of Online Partnerships) and Rachad Saddi (a Channel  
11 Partner Manager). Both said that they were very impressed with AdTrader and its growth. At no  
12 point during this meeting did anyone from Google raise any concerns that AdTrader or its  
13 publisher clients had failed to comply with Google's AdX policies in any way, or that any of their  
14 user traffic was invalid in any way. Instead, Google's employees clearly implied that AdTrader  
15 was a model exemplar for AdX publishers.

16 57. AdTrader and its employees had another meeting with Google's AdX publisher  
17 team in April 2017, this time in Dublin, Ireland. The two sides discussed in detail the publishers  
18 in AdTrader's account and the future plans it had for growing its AdX account. At no point  
19 during this meeting did anyone from Google raise any concerns that AdTrader or its publisher  
20 clients had failed to comply with Google's AdX policies in any way, or that any of their user  
21 traffic was invalid in any way. Instead, Google's employees clearly implied that AdTrader was a  
22 model exemplar for AdX publishers.

23 58. By early 2017, AdTrader managed on-line advertising for hundreds of web  
24 publishers. The majority of publisher inventory was monetized through AdX. Most of  
25 AdTrader's publishing clients also had their own individual AdX or AdSense accounts as well.

26 59. By early 2017, AdTrader managed on-line advertising for dozens of advertisers.  
27 The majority of the advertising campaigns were run through DBM and, because of Google's  
28



1 preference for directing advertisers to AdX, most of those ads were placed on AdX. Most of  
2 these advertisers did not have their own DBM or AdWords account.

3 60. AdTrader also paid to engage in online advertising of its own services. AdTrader  
4 used DBM and AdWords to display its own advertisements on the websites of AdX publishers.

5 61. Plaintiff Classic runs a restaurant. Classic engaged AdTrader to use DBM to  
6 advertise its business on the Internet, with the majority of all ad impressions coming from AdX  
7 publisher websites. Any advertising expenditures charged by Google for such ad impressions  
8 were passed on by AdTrader to Classic and paid in full by Classic. Any refunds or credits given  
9 by Google for such advertising expenditures would have also been passed on by AdTrader to  
10 Classic.

11 62. Plaintiff LML runs a restaurant. LML engaged AdTrader to use DBM to advertise  
12 its business on the Internet, with the majority of all ad impressions coming from AdX publisher  
13 websites. Any advertising expenditures charged by Google for such ad impressions were passed  
14 on by AdTrader to LML and paid in full by LML. Any refunds or credits given by Google for  
15 such advertising expenditures would have also been passed on by AdTrader to LML.

16 63. Plaintiff Ad Crunch formerly operated a digital advertising agency. Ad Crunch  
17 engaged AdTrader to use DBM to advertise its business on the Internet, with the majority of all  
18 ad impressions coming from AdX publisher websites. Any advertising expenditures charged by  
19 Google for such ad impressions were passed on by AdTrader to Ad Crunch and paid in full by Ad  
20 Crunch. Any refunds or credits given by Google for such advertising expenditures would have  
21 also been passed on by AdTrader to Ad Crunch.

22 64. Plaintiff Fresh Break runs a restaurant. Fresh Break engaged AdTrader to use  
23 DBM to advertise its business on the Internet, with the majority of all ad impressions coming  
24 from AdX publisher websites. Any advertising expenditures charged by Google for such ad  
25 impressions were passed on by AdTrader to Fresh Break and paid in full by Fresh Break. Any  
26 refunds or credits given by Google for such advertising expenditures would have also been passed  
27 on by AdTrader to Fresh Break.  
28



1           65. Plaintiff SCB is a collections agency. It used AdWords to advertise its business on  
2 the Internet. As SCB did not opt out of the Google Display Network, some of its ad impressions  
3 came from AdX publisher websites.

4                           ***Google Tries to Destroy AdTrader's Business***

5           66. In early 2017, AdTrader began a contractual relationship with DingIt.tv ("DingIt")  
6 in its capacity as an NPM. DingIt, and its parent company Level Up Media, is one of the leading  
7 video hosting services for e-sports. AdTrader and DingIt had a contractual relationship.  
8 AdTrader helped DingIt optimize the monetization of its content, including the bidding and  
9 placement of advertisements on DingIt web properties through AdX.

10          67. DingIt was pleased with the quality of AdTrader's work. On April 26, 2017,  
11 DingIt executives had a call with AdTrader's executives, and DingIt offered an exclusive  
12 partnership to AdTrader worth millions of dollars in added annual revenue. AdTrader accepted.

13          68. AdTrader's employees repeatedly made Google aware of the existence of the  
14 AdTrader-DingIt relationship. As an NPM, AdTrader needed Google's approval to add any new  
15 publisher to its stable, and DingIt was no exception. Furthermore, in March and April 2017,  
16 AdTrader employees had specific discussions with Google employees Pavel Pimshin (the then-  
17 current account manager assigned to AdTrader) and Mr. Torok about AdTrader working with  
18 DingIt. And on May 12, 2017, Mr. Pimshin e-mailed AdTrader to ask it to have DingIt directly  
19 contact Google and, even more unusually, to see AdTrader's contract with DingIt.

20          69. On May 15, 2017, AdTrader introduced Mr. Pimshin and other Google employees  
21 to Adam Simmons, an executive of Level Up Media, as requested by Google. Mr. Simmons then  
22 directly communicated with those Google employees by e-mail.

23          70. AdTrader also gave Mr. Pimshin a copy of its contract with DingIt. As a result,  
24 Google became fully knowledgeable about the terms of AdTrader's supply-side agreements,  
25 including when and how AdTrader remitted funds received from Google to its publisher clients.

26          71. On May 19, 2017, a few days before Google was due to pay AdTrader its accrued  
27 AdX earnings (and only four days after DingIt contacted Google directly), without any warning,  
28 AdTrader received a form e-mail from Google stating, in part:

1 Hello,

2 This e-mail is to alert you that your DoubleClick Ad Exchange account was found to be  
3 non-compliant with our Ad Exchange program policies and as a result, your **Ad  
Exchange account has been disabled.**

4 **Current account status:** Disabled

5 **Action required:** None

6 **Violation explanation**

7 As stated in our program policies, sites displaying Google ads should provide substantial  
8 and useful information to the user. Users should be able to easily navigate through the site  
9 to find what products, goods, or services are promised. Examples of misguided  
navigation include, but are not limited to:

10 False claims of downloadable or streaming content

11 Linking to content that does not exist

12 Redirecting users to irrelevant and/or misleading webpages

13 Text on a page unrelated to the topic and/or business model of the website.

14 **Payment**

15 As your account has been permanently disabled, we will withhold payment of your  
16 account balance. As stated in the terms governing your Ad Exchange account, Google  
17 reserves the right to withhold from its payments to publishers any amounts refunded to  
18 advertisers in connection with the publisher's failure to comply with their Ad Exchange  
agreement, as reasonably determined by Google. Please note that this step was taken in an  
effort to maintain the quality of the Ad Exchange program and to protect the interests of  
our advertisers. The earnings on your account will be returned to the affected advertisers.

19 **No further accounts**

20 Please note that publishers disabled for invalid activity on Ad Exchange are not allowed  
any further participation in Ad Exchange, AdSense or our other ad monetization products.

21 72. AdTrader's employees were utterly baffled by this e-mail. None of the websites  
22 monetized by AdTrader performed the kind of hypothetical, prohibited activities listed by  
23 Google, and Google employees had repeatedly confirmed that AdTrader's websites were in  
24 compliance with Google's policies.

25 73. AdTrader's employees reached out to Google's employees for clarification, but did  
26 not receive any insight. After ignoring or brushing off AdTrader for six days, finally Google  
27 employees would say only that AdTrader's account was disabled because it was found to be in  
28 violation of some unspecified AdX guidelines. This was in line with Google's policy that it

1 refuses to provide publishers whose accounts are disabled “any information about their account  
2 activity, including any web pages, users, or third-party services that might have been involved.”  
3 Google’s statement is found on one of its DoubleClick Ad Exchange Seller Help webpages, a true  
4 and correct copy of which is attached as Exhibit 5. Thus, AdTrader had no effective way of  
5 contesting Google’s decision.

6 74. AdTrader submitted an internal appeal to Google, pursuant to its contractual right  
7 to appeal. Google has expressly recognized the existence of this contractual right, as it expressly  
8 stated, “Publishers whose accounts we’ve disabled have the right to appeal their case.” Google’s  
9 acknowledgment is found on one of its Google Ads Traffic Quality webpages, a true and correct  
10 copy of which is attached as Exhibit 6.

11 75. Google’s appeal form, however, is nothing more than a pro forma document, and  
12 only asks very general, standardized questions without permitting the user to elaborate on the  
13 reasons why Google’s reasons for terminating the user’s AdX account and withholding the  
14 accrued earnings were erroneous. In particular, because Google’s notice of violation did not  
15 actually inform AdTrader of what it did wrong, AdTrader had no way of knowing what facts to  
16 provide to Google to get it to reconsider its decision. This was especially egregious in light of  
17 Google’s representation on that same webpage that it “review[s] every appeal that supplies  
18 enough information to investigate[.]”

19 76. Google summarily rejected AdTrader’s internal appeal by means of an auto-  
20 generated e-mail that was sent a short time later. On information and belief, nobody at Google  
21 closely reviewed AdTrader’s appeal, as the appeal form was designed to convey minimal  
22 information to Google and give publishers the illusion that Google might reconsider its decision.

23 77. AdTrader’s employees again asked Google representatives to provide further  
24 information as to what policy AdTrader had supposedly violated, and explained that AdTrader  
25 could not effectively appeal Google’s decision if it did not know what it did that was wrong.  
26 Google’s employees were unmoved and did not provide any additional information.

1           78. In any event, Google prevented AdTrader from receiving the benefit of a  
2 meaningful appeal of its decision to terminate its AdX account and withhold its accrued AdX  
3 earnings, as Google refused to tell AdTrader the reason Google had terminated its account.

4           79. AdTrader employees were 100% certain that none of its publisher websites had  
5 violated any Google policies. But nevertheless, they pointed out to Google employees that, even  
6 if, hypothetically, one or two publisher websites were not in compliance with Google's rules,  
7 AdTrader's remaining websites (as it had over two hundred active publishers for that earnings  
8 period) would still be in compliance and it would not be fair to withhold the earnings generated  
9 from those compliant websites. Google's employees remained unmoved.

10           80. AdTrader's employees were also baffled by Google's decision to withhold  
11 payment of AdTrader's accrued AdX earnings, which totaled \$476,622.69 as of May 19, 2017,  
12 for other reasons. Per the express terms of the Google Service Agreement, Google could  
13 withhold AdTrader's accrued AdX earnings only if two condition precedents were present.  
14 Under the first condition precedent, Google must show that a publisher's withheld AdX earnings  
15 was due to "invalid queries, impressions, conversions, or clicks[.]" But Google's May 19, 2017  
16 notice of violation did not even accuse AdTrader of having invalid queries, impressions,  
17 conversions, or clicks.

18           81. Furthermore, AdTrader never received any prior notice from Google of a breach of  
19 the Google Services Agreement. Indeed, the only contractual grounds for Google to immediately  
20 terminate that contract is if a web publisher displays pornographic content on its website, and  
21 AdTrader has never had any of its website publishers display any pornographic content.

22           82. Most telling, however, is the fact that to this day, none of its publisher clients have  
23 had their individual AdX or AdSense accounts suspended by Google. Indeed, Google maintains  
24 several publicly available files that identify the active participants in AdX, and as of the filing of  
25 this pleading, these files show that multiple AdTrader publisher clients such as dubizzle.com,  
26 IGN, ytn.co.kr, OLX, mydotcomrade.com, seoul.com.kr., dir.bg, standartnews.com, khan.co.kr all  
27 continue to monetize their content through AdX. This was the case despite the fact that Google's  
28 termination e-mail clearly stated that "publishers disabled for invalid activity on Ad Exchange are

1 not allowed any further participation in Ad Exchange, AdSense or our other ads monetization  
2 products.” Therefore, if AdTrader had, in fact, violated an AdX policy, then at least some of its  
3 publisher clients necessarily would also have had their individual accounts disabled, because  
4 AdTrader (as an NPM) only worked on the websites of its publisher clients. The fact that none of  
5 AdTrader’s publisher clients suffered a similar fate is proof that AdTrader did not, in fact, violate  
6 any Google policies. And as even further evidence, Google did not report any policy violations  
7 on the “Policy Violations” page of AdTrader’s DoubleClick for Publisher’s account (which was  
8 tied to its AdX account).

9 83. Google’s employees certainly had a motive to gin up a pretextual reason to  
10 terminate AdTrader’s AdX account. Google typically has a direct relationship with major  
11 website publishers and helps those publishers monetize their properties on AdX (i.e., the same  
12 types of services that managers like AdTrader provide). Google thus had financial incentives to  
13 cause DingIt to directly turn to Google for AdX services (or to a preferred AdX partner that is  
14 typically owned by ex-Google employees).

15 84. Indeed, Mr. Torok had previously (and privately) warned AdTrader employees  
16 that in his observation, NPMs would mysteriously start getting into trouble with Google once  
17 they reached an annual revenue run rate of \$4-5 million. AdTrader employees noted to  
18 themselves that at that revenue level, the NPM’s publisher clients were likely generating enough  
19 revenue that Google would want to directly work with those publishers. As such, AdTrader’s  
20 executives were concerned when Google first requested an introduction to DingIt and the details  
21 of AdTrader’s contract with it. AdTrader ultimately complied with Google’s request, however,  
22 because it had no choice in the matter and did not want to risk antagonizing Google.

23 85. On information and belief, a few days after Google terminated AdTrader’s account  
24 on May 19, 2017, Google directly contacted DingIt to begin a direct relationship. If true, then  
25 AdTrader’s termination was not a coincidence.

26 86. Undoubtedly, Google will rely on a contractual Limitations of Liability provision  
27 in an attempt to minimize its liability to AdTrader for such wrongful conduct. This provision,  
28

1 however, is substantively and procedurally unconscionable, and AdTrader seeks a declaration on  
2 behalf of itself and other AdX publishers that this provision is unenforceable.

3 87. Rather than force its publisher clients to absorb losses because Google refused to  
4 pay its accrued AdX earnings, AdTrader paid out of its own cash reserves what it could, to what  
5 those publishers were owed. Until the filing of this lawsuit, those publisher clients never knew  
6 the truth, even though it would have been easier for AdTrader to simply point out to its clients  
7 what Google did and not pay out any monies. AdTrader thus spent the majority of its own  
8 remaining funds to essentially protect Google's reputation.

9 ***Google Lies About Refunding Its Advertisers***

10 88. The second condition precedent under the Google Services Agreement for Google  
11 to withhold a publisher's accrued AdX earnings is if it refunds "any amounts... to advertisers in  
12 connection with [a publisher's] failure to comply with this Agreement, as reasonably determined  
13 by Google."

14 89. It appeared to AdTrader that Google was primarily relying upon this second  
15 condition precedent (irrespective of whether it satisfied the first condition precedent) to withhold  
16 payment from AdTrader, even though the Google Services Agreement allows Google to withhold  
17 accrued AdX earnings only if both grounds are satisfied. On a May 24, 2017 recorded telephone  
18 call, Mr. Nakache represented to AdTrader's employees that:

19 AdTrader: All of the money is going to be refunded to advertisers?

20 Nakache: Yes.

21 AdTrader: Does that mean that every single impression and every single click for all of  
22 our publishers has been...

23 Nakache: Exactly. Everything in the account, the account is in violation of our policy,  
24 advertisers have been impacted, and as a result we have made the decision to refund all  
the advertisers and all the revshare from Google.

25 \*\*\*

26 AdTrader: So, every single advertisers [sic] who has bought a single impression for the  
past two months from any of our publishers will get their money back? Is that correct?

27 Nakache: Yes.

28 \*\*\*

AdTrader: I see. OK, so we are not going to receive anything unless the appeal is successful we will not be paid anything.

Nakache: No, the money is going to be paid back to the advertisers.

AdTrader: So, whether the appeal is successful or not, we will still not receive the payment, is that correct?

Nakache: Yes.<sup>1</sup>

90. Mr. Nakache lied. Google did not, in fact, refund its advertisers that had advertised on AdTrader's publisher's websites.

91. As an advertising agency / advertising network, AdTrader also handled the accounts of numerous advertisers that bought inventory on AdX publisher websites using DBM. And during the last earnings period prior to AdTrader's account termination, AdTrader used DBM to have a number of its advertising clients run advertisements on the websites of AdTrader's publishers. A small sampling of such examples includes:

- a. Citroen, Daza, Ivet.bg, Mackeeper, Mytime.mk, Refan, and Tehnomix advertised on the website of an AdTrader publisher named athletic.net.
- b. Allianz.bg, Gosport.bg, Mytime.mk and VIP Watches advertised on the website of an AdTrader publisher named bgbasket.com.
- c. Citroen, Daza, Delimano, Diamonds Club, Dormeo, Gosport.bg, Happy Bulgaria, Ivet.bg, MaistorPlus, Markiiza, Max Credit, Nestle, Sportex, Topcho, and VIP Watches advertised on the website of an AdTrader publisher named blitz.bg. (AdTrader also put up its own advertisements on that website as well.)
- d. Allianz.bg, Citroen, Daza, Diamonds Club, Dormeo, Gosport.bg, Happy Bulgaria, Ivet.bg, Mackeeper, Refan, Tehnomix, and VIP Watches advertised on the website of an AdTrader publisher named cheezburger.com. (AdTrader also put up its own advertisements on that website as well.)

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<sup>1</sup> Mr. Nakache is located in Ireland and AdTrader's employee was also located out of the United States at the time. Therefore, California's two-party consent law does not apply.



- e. Citroen, Daza, Delimano, Diamonds Club, Dormeo, Gosport.bg, Happy Bulgaria, Ivet.bg, Max Credit, Nestle, Refan, Sportex, Tehnomix, and VIP Watches advertised on the website of an AdTrader publisher named dir.bg. (AdTrader also put up its own advertisements on that website as well.)
- f. Citroen, Daza, Dormeo, Gosport.bg, Happy Bulgaria, Ivet.bg, Mackeeper, Nestle, Refan, Sportex, Tehnomix, and VIP Watches advertised on various websites published by the International Business Times, which was also an AdTrader publisher. (AdTrader also put up its own advertisements on these websites as well.)
- g. Citroen, Daza, Delimano, Diamonds Club, Dormeo, Gosport.bg, Happy Bulgaria, Ivet.bg, Mackeeper, Max Credit, Nestle, Refan, Tehnomix, and VIP Watches advertised on the popular video-gaming website IGN, which was also an AdTrader publisher. (AdTrader also put up its own advertisements on that website as well.)
- h. Citroen, Mytime.mk, Sportex, and VIP Watches advertised on the website of an AdTrader publisher named investor.bg.

92. AdTrader never got any refunds or credits from Google through DBM despite having run those aforementioned advertisements, notwithstanding Mr. Nakache's emphatic statements to the contrary. And for AdTrader's advertising clients that also run advertisements on AdTrader's publisher's websites using their individual AdWords accounts, none of them received any refunds or credits on their individual accounts for these specific advertisements.

93. Alerted to this inconsistency, AdTrader reviewed its records to see whether it had ever received a refund or credit from Google for ad buys made through DBM. (Google gives separate monthly invoices for ad buys made through DBM and for advertising done via AdWords.) Google gave no refunds or credits even though, every single month, Google withheld a small amount of accrued earnings from AdTrader on its publishing activities for what it deemed to be invalid activity and apparently claimed to have refunded the withheld amounts to its advertisers. During some of these same months, however, AdTrader and its advertising clients



1 had bought traffic from some of those same websites through DBM, so if Google's explanation  
2 was true, then AdTrader and its advertising clients should have received some refunds or credits  
3 almost every month.

4 94. AdTrader also checked the records for its AdWords account. That account did  
5 reflect some credits from Google over the years, but always in miniscule amounts and,  
6 furthermore, Google does not provide any detail as to why those refunds are being provided. For  
7 example, an AdWords advertiser has no way of knowing whether a refund or credit is coming for  
8 an ad impression placed on an AdX publisher's website, or a Youtube video, or an AdSense  
9 publisher's website, or from Google Search. Only Google knows that information and it does not  
10 share such information with any AdWords advertisers.

11 95. The vast majority of ad buys made by AdTrader (both for itself, and on behalf of  
12 its advertising clients) are through DBM. But, just to be sure, AdTrader checked its AdWords  
13 invoices to see if the refunds Mr. Nakache claimed Google had made could have been reflected  
14 there instead of a DBM invoice. Those AdWords invoices, however, showed that Google had not  
15 issued Mr. Nakache's claimed refunds.

16 96. AdTrader employees subsequently corresponded with employees of one of its  
17 channel partners, a well-known DoubleClick certified marketing partner. That channel partner  
18 handled many of AdTrader's ad buys through DBM, and confirmed that AdTrader had not  
19 received any refunds from Google for advertising it had made through DBM on AdX publisher  
20 websites.

21 97. Moreover, following the filing of this lawsuit, representatives from Criteo – a  
22 publicly traded marketing company that engages in substantial amounts of online advertising –  
23 contacted employees of AdTrader. Criteo's representatives claimed that the company's records  
24 also did not show any evidence of it having received refunds from Google for advertising  
25 expenditures it made through DBM on AdX publisher websites.

26 98. In early December 2017 – around the time AdTrader filed this lawsuit – AdTrader  
27 finally received a DBM invoice from Google reflecting refunds for advertising on sites with  
28 invalid traffic. In that invoice, Google gave AdTrader total refunds of about \$2 against total

1 charges of \$7,837.55. As the invoice specifically identifies which advertisers were getting  
2 refunds from Google, AdTrader could tell that none of this \$2 in refunds had anything to do with  
3 the events that led Google to terminate AdTrader's NPM account. The additional fact that this  
4 invoice came eight months after Google confiscated AdTrader's accrued AdX earnings further  
5 dispelled any linkage between the refunds and that confiscation.

6 99. These revelations are especially problematic for Google, because it is contractually  
7 obligated to refund its advertisers for advertising funds spent by them on invalid impressions or  
8 clicks. Google represented to AdTrader, as it does to all advertisers, that it performs something  
9 called "offline analysis" of its advertising networks to ascertain whether any impressions or clicks  
10 on an advertisement are invalid.

11 100. Google further represented that "offline analysis" was supposed to be only one of  
12 three different methods that Google used to detect invalid ad impressions. As Google explained,  
13 "offline analysis" was a detection scheme based upon automated algorithms and manual analysis  
14 that affected all Google sites and even those in other networks. Google explained that "offline  
15 analysis" would take place after a different process called "proactive filters," which involved  
16 automated algorithms that filtered and discarded out invalid impressions in real time, before those  
17 impressions were charged to an advertiser's account. Finally, Google represented that the final  
18 process it used to detect invalid ad impressions came about through "reactive investigations" –  
19 which was essentially a review performed in response to an advertiser inquiry about invalid  
20 clicks.

21 101. Google's representations are found on its Google Ads Traffic Quality Resource  
22 Center webpage, and a true and correct copy of this webpage is attached as Exhibit 7. Despite the  
23 iterations of that webpage over the years, Google keeps making essentially the same  
24 representation over and over. Google representatives also expressly refer advertisers and  
25 potential advertisers (during in-person conversations, telephone calls, e-mails, message board  
26 responses, and Internet chats) to review the Google Ads Traffic Quality Resource Center  
27 webpage whenever they have specific questions about invalid activity and advertising fraud.  
28 Indeed, Google prominently states on its own webpage

1 (<https://adwords.googleblog.com/2007/08/introducing-ad-traffic-quality-resource.html>) that the  
2 Ad Traffic Quality Resource Center “serve[s] as the single source for all click fraud and ad traffic  
3 quality related information.”

4 102. More importantly, Google also represented on that Ad Traffic Quality Resource  
5 Center webpage that “When invalid activity is found through offline analysis and reactive  
6 investigation, we mark those clicks as invalid and issue credits to any advertisers affected by this  
7 activity.” The issuance of refunds or credits after the fact was an important way for Google to  
8 distinguish “offline analysis” and “reactive investigation” from “proactive filtering,” as the latter  
9 prevented invalid ad impressions from being charged to the advertiser in the first place.

10 103. Google repeats its representation that it would provide refunds or credits to  
11 advertisers for invalid ad impressions on multiple webpages that it tells its advertisers to review.  
12 For example, in an AdWords Help article, Google states that, with respect to “invalid activity,”  
13 that it “prohibit[s] this kind of bad behavior. And that’s why you don’t have to pay for these  
14 unfair clicks and impressions.” A true and correct copy of this webpage is attached as Exhibit 8.

15 104. As another example, Google stated on another Ad Traffic Quality webpage that:  
16 “When we find something wrong, we try to make it right as soon as possible. We suspend or  
17 disable invalid accounts, and may withhold payments to the publisher. When appropriate and  
18 possible, that money is credited back to the advertisers – not only for the month where we found  
19 the invalid activity, but often for the previous month, as well.” A true and correct copy of this  
20 webpage is attached as Exhibit 6.

21 105. In still yet another example, Google stated on its Inside AdWords blog that “our  
22 team proactively identifies invalid activity that may not have been automatically filtered and  
23 credits advertisers accordingly.... In the interest of transparency, all credits, past and future, for  
24 future invalid click activity are now labeled ‘Adjustment – Click Quality.’” A true and correct  
25 copy of this webpage is attached as Exhibit 9.

26 106. All of these representations were made by Google to Plaintiffs and all other  
27 advertising agencies, advertising networks, and advertisers when they first enter into the  
28 DoubleClick Ad Exchange Agreement, the DoubleClick Advertising Agreement, and/or the

1 AdWords Agreement. Google then continually affirms these representations by repeatedly re-  
2 directing existing clients to its previously referenced webpages whenever they have any questions  
3 about Google's advertising programs.

4 107. All of the aforementioned representations were reviewed by AdTrader employees  
5 on or shortly before it entered into the AdWords Agreement on February 21, 2013. AdTrader,  
6 just like other advertising agencies, advertising networks, and advertisers, decided to sign that  
7 contract in large measure because of these representations, as Google's statements provided  
8 reassurance that it had ad fraud detection in the specific form of its "offline analysis" in addition  
9 to the two other forms of ad fraud detection described by Google, and also that AdTrader and its  
10 advertisers would not have to pay for any ad impressions that Google determined to be invalid.

11 108. All of the aforementioned representations were re-reviewed by AdTrader  
12 employees on or shortly before it entered into the DoubleClick Ad Exchange Agreement on or  
13 around June 19, 2014. AdTrader, just like other advertising agencies, advertising networks, and  
14 advertisers, decided to sign that contract in large measure because of these representations, as  
15 Google's statements reaffirmed that it had ad fraud detection in the specific form of its "offline  
16 analysis" in addition to the two other forms of ad fraud detection described by Google, and also  
17 that AdTrader and its advertisers would not have to pay for any ad impressions that Google  
18 determined to be invalid. Furthermore, Google's reaffirmations led AdTrader, just like other  
19 advertising agencies, advertising networks, and advertisers, to make advertising expenditures on  
20 AdX publisher websites instead of competing ad platforms.

21 109. All of the aforementioned representations were re-reviewed by AdTrader  
22 employees on or shortly before it entered into the DoubleClick Advertising Agreement on March  
23 1, 2016. AdTrader, just like other advertising agencies, advertising networks, and advertisers,  
24 decided to sign that contract in large measure because of these representations, as Google's  
25 statements reaffirmed that it had ad fraud detection in the specific form of its "offline analysis" in  
26 addition to the two other forms of ad fraud detection described by Google, and also that AdTrader  
27 and its advertisers would not have to pay for any ad impressions that Google determined to be  
28 invalid. Furthermore, Google's reaffirmations led AdTrader, just like other advertising agencies,

1 advertising networks, and advertisers, to decide to maintain or increase its advertising  
2 expenditures on AdX publisher websites instead of competing ad platforms.

3 110. All of the aforementioned representations were reviewed by SCB owners on or  
4 shortly before it entered into the AdWords Agreement during the spring of 2015. SCB, like all  
5 other advertisers, decided to sign that contract in large measure because of these representations,  
6 as Google's statements provided reassurance that it had ad fraud detection in the specific form of  
7 its "offline analysis" in addition to the two other forms of ad fraud detection described by Google,  
8 and also that SCB would not have to pay for any ad impressions that Google determined to be  
9 invalid.

10 111. Also, on a monthly or quarterly basis in 2014-2017, AdTrader employees would  
11 re-review all of Google's written communications about its advertising programs, including but  
12 not limited to the aforementioned representations, on their own accord in response to any  
13 questions they had about Google's advertising programs or simply to make sure they were up to  
14 date on everything related to Google's advertising programs. Google's reaffirmations led  
15 AdTrader, just like other advertising agencies, advertising networks, and advertisers, to decide to  
16 maintain or increase its advertising expenditures on AdX publisher websites instead of competing  
17 ad platforms.

18 112. As it turned out, Google's aforementioned representations were false. During an  
19 Internet chat with AdTrader employees held on June 2, 2017, Google employee Paschal Pradeep  
20 (who was some kind of account or customer service representative for DBM) confirmed that in  
21 DBM (again, the largest demand-side-platform in the world and which is used to run ad  
22 campaigns for the majority of advertisers using AdX) there was actually no way for Google (or  
23 any advertiser) to check on whether advertisements were receiving invalid impressions and clicks  
24 (i.e., there is no "offline analysis" as Google has claimed).

25 113. Mr. Pradeep explained that this was because DBM only does real-time filtering of  
26 invalid impressions and clicks. In other words, when an advertiser is checking its DBM account,  
27 the results it sees already reflect that Google has excluded invalid impressions and clicks from the  
28

1 final metrics. “Offline analysis” apparently did not exist, as the only method of fraud detection  
2 that existed was “proactive filtering.”

3 114. AdTrader, of course, never saw any indication in DBM (or any other Google  
4 product) that any of its advertisements were being displayed on websites with invalid impressions  
5 and clicks. Incredulous that in the context of AdTrader’s account termination, Google would  
6 essentially fabricate a claim that it had somehow subsequently detected invalid activity coming  
7 from AdTrader’s publisher websites (since the real-time, filtered data showed no such invalid  
8 activity), AdTrader’s employees repeated their questions to Mr. Pradeep to see if there was any  
9 misunderstanding. There was not. Mr. Pradeep explained that there was no end-of-the-month  
10 adjustment for invalid activity, or that such an adjustment took longer than a month to finalize.  
11 Instead, he stated, “[i]t is automatic and it will happen instantly.”

12 115. And, of course, Google’s representation is false for the added reason that it does  
13 not, in fact, issue credits to advertisers affected by invalid activity. AdTrader and its advertisers,  
14 are the obvious case in point.

15 116. Additional confirmation came by way of an August 25, 2017 article published in  
16 the Wall Street Journal. The article explained that Google had detected a surge of ad fraud during  
17 the second quarter of 2017 for DBM users. But rather than offer full refunds or credits to those  
18 advertisers, as it had continually represented in its Ad Traffic Quality Resource Center webpage,  
19 Google was offering only a modest reimbursement – about 7-10% of the total amounts spent by  
20 those advertisers (with some advertisers apparently getting much less). These amounts represent  
21 only the “platform fee” that advertisers pay to Google as opposed to the expenditures spent on the  
22 advertisements themselves. Not surprisingly, many advertisers were unhappy with this  
23 development.

24 117. Also in this article, Google said that the refunds it was offering were appropriate  
25 “because it doesn’t control the rest of the money spent.” This statement is untrue, as the vast  
26 majority of advertisements served through DBM go to AdX publisher websites, and Google  
27 routinely deducts or withholds payments to those publishers (like it did for AdTrader) on the  
28

1 grounds that some or all of the clicks or impressions generated on that website were somehow  
2 invalid

3 118. For example, using analytics data provided by Google itself, AdTrader determined  
4 that for all of 2017, over 70% of all of its advertising clients' ad impressions acquired through  
5 DBM had originated through AdX as opposed to other advertising exchanges.

6 119. Google's analytics data (which AdTrader has access to) also showed that, with  
7 respect to the world-wide usage of DBM as of March 2018, 32.79% of all unique cookies with  
8 impressions for advertisers had originated through AdX – or 3½ times more than the next largest  
9 source – AppNexus.

10 120. Indeed, it is well known throughout the advertising industry that Google uses  
11 DBM to funnel advertisers to AdX instead of other advertising exchanges, and it is a topic that is  
12 openly discussed between executives of major advertisers, advertising agencies, advertising  
13 networks, and other advertising exchanges. For example, in a November 9, 2017 interview with a  
14 media publication, AppNexus's CEO commented that most DBM buyers that spoke to AppNexus  
15 confirmed that more than half of their advertising spend goes to AdX when they used DBM.

16 121. Apparently, some executive at Google read the August 25, 2017 Wall Street  
17 Journal article and realized that it publicly exposed that Google was not giving full refunds or  
18 credits as contractually obligated. On or around September 1, 2017, Google suddenly changed  
19 the terms of the contract governing its relationship with AdWords advertisers – the AdWords  
20 Agreement. The primary change it effected to this agreement was that AdWords advertisers were  
21 now required to arbitrate their disputes with Google and were precluded from bringing any class  
22 actions against Google. It is plainly obvious that Google made such changes directly in response  
23 to the August 25, 2017 Wall Street Journal article to prevent advertisers (especially smaller  
24 advertisers) from suing Google and obtaining redress.

25 122. This sudden change to the contract terms was particularly egregious because it  
26 purported to require advertisers to arbitrate any claim they had against Google arising prior to the  
27 date of the contract modification. But in all prior iterations of the AdWords Agreement, Google  
28 specifically represented to everyone that any future “changes to the Terms **will not apply**



1 **retroactively**[.]” Plaintiffs and all other advertisers using AdWords, relied on this express  
 2 contractual representation by Google in deciding to sign up for, and continue using AdWords,  
 3 because Google had promised it would not try to retroactively change contract terms.

4 123. Plaintiffs did not agree to the modified AdWords contract, and are not bound by its  
 5 terms. Many other advertisers are also similarly not bound, as they either declined to accept the  
 6 modified contract or specifically opted out of the new arbitration requirement.

7 124. AdTrader filed this lawsuit on December 13, 2017, and its filing received media  
 8 coverage across the world. That same day, in response to the allegations raised in this lawsuit, a  
 9 Google representative informed a United Kingdom publication that “Google has a **longstanding**  
 10 **policy** of refunding advertisers for invalid traffic” but also admitted that this policy was  
 11 “**currently being expanded** to include ads purchased via DoubleClick Bid Manager.” In other  
 12 words, Google admitted to the world that (1) it had a contractual obligation to refund its  
 13 advertisers for invalid traffic, and (2) until recently, it did not provide refunds to advertisers that  
 14 used DBM to buy ad space on an AdX publisher’s website.

### 15 CLASS ACTION ALLEGATIONS

16 125. Plaintiffs brings this action on behalf of themselves and an Advertiser Class,  
 17 defined as:

18 All businesses and Google-recognized advertising agencies and advertising  
 19 networks that, at any time during the applicable limitations period, paid Google to  
 20 display their advertisements on the website of a third-party publisher participating  
 21 in the DoubleClick Ad Exchange, and did not receive refunds or credits for  
 advertising expenditures spent by them on that publisher website after Google  
 withheld any amount of payment to that publisher for what Google claimed to be  
 invalid activity or non-compliance with a Google policy.

22 126. AdTrader additionally brings this action on behalf of itself and a DoubleClick  
 23 Advertising Agreement Sub-Class, defined as:

24 All businesses and Google-recognized advertising agencies and advertising  
 25 networks that executed the DoubleClick Advertising Platform Agreement and that,  
 26 at any time during the applicable limitations period, paid Google to display their  
 27 advertisements on the website of a third-party publisher participating in the  
 28 DoubleClick Ad Exchange, and did not receive refunds or credits for advertising  
 expenditures spent by them on that publisher website after Google withheld any  
 amount of payment to that publisher for what Google claimed to be invalid activity  
 or non-compliance with a Google policy.



1           127. Through the process of seeking and obtaining class certification, Plaintiffs reserve  
2 the right to amend the definitions of the proposed classes, as appropriate.

3           128. Excluded from the Class and the Sub-Class are the officers, directors, and  
4 employees of Google, any judicial officer presiding over this action, and the members of his or  
5 her immediate family and judicial staff.

6           129. This action is brought and may properly be maintained as a class action pursuant  
7 to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3).

8           130. The Class and the Sub-Class are so numerous that joinder of all members is  
9 impracticable. There are tens of thousands, if not hundreds of thousands, of businesses that have  
10 done online advertising on an AdX publisher website. The precise number and identity of the  
11 members of the Class and the Sub-Class can be obtained from the records of Google.

12           131. There are numerous questions of law and fact common to the members of the  
13 Class and Sub-Class which predominate over any questions affecting only individual members  
14 including: (i) whether Google defrauded its DBM and AdWords advertising clients by falsely  
15 representing to them that Google refunded or credited advertisers when it discovers that their  
16 advertising funds had been spent on fraudulent or invalid clicks, (ii) whether Google had  
17 negligently misrepresented to its DBM and AdWords advertising clients that Google refunded or  
18 credited advertisers when it discovers that their advertising funds had been spent on fraudulent or  
19 invalid clicks, (iii) whether Google is in violation of California Penal Code § 496(c) for  
20 defrauding its DBM and AdWords advertising clients by falsely representing to them that Google  
21 refunded or credited advertisers when it discovers that their advertising funds had been spent on  
22 fraudulent or invalid clicks, (iv) whether Google had breached its contracts with its DBM and  
23 AdWords advertising clients by failing to provide them refunds or credits for their advertising  
24 funds that had been spent on fraudulent or invalid clicks, (v) whether Google had breached the  
25 implied covenant of good faith and fair dealing to its DBM and AdWords advertising clients by  
26 failing to provide them refunds or credits for their advertising funds that had been spent on  
27 fraudulent or invalid clicks, (vi) whether Google breached the implied duty to perform with  
28 reasonable care to its DBM and AdWords advertising clients by failing to provide them refunds

1 or credits for their advertising funds that had been spent on fraudulent or invalid clicks, (vii)  
 2 whether Google had unjustly enriched itself at the expense of its DBM and AdWords advertising  
 3 clients by failing to provide them refunds or credits for their advertising funds that had been spent  
 4 on fraudulent or invalid clicks, (vii) whether Google had violated California's unfair competition  
 5 law by misrepresenting to its DoubleClick and AdWords advertising clients that Google refunded  
 6 or credited advertisers when it discovers that their advertising funds had been spent on fraudulent  
 7 or invalid clicks and/or by withholding accrued earnings to publishers participating in the  
 8 DoubleClick Ad Exchange on the grounds that Google had determined such funds were  
 9 associated with invalid activity and refunded back to advertisers when, in reality, Google was  
 10 keeping those funds for itself, and (xii) whether Plaintiffs and the members of the Class and the  
 11 Sub-Class are entitled to damages, restitution, and injunctive relief for Google's conduct.

## 12 CLAIMS FOR RELIEF

### 13 FIRST CAUSE OF ACTION: 14 **Breach of Contract (Google Services Agreement)** 15 **by AdTrader Against Google** 16 **(Individual Claim)**

17 132. Plaintiffs hereby re-incorporate and re-allege all the preceding paragraphs as if  
 18 fully set forth herein.

19 133. AdTrader entered into the Google Services Agreement with Google.

20 134. As previously alleged in greater detail, AdTrader substantially performed all of its  
 21 obligations under the Google Services Agreement. AdTrader and its web publisher clients  
 22 published advertisements on their websites served to them by Google, and thereby generated  
 23 earnings for Google. AdTrader ensured that its web publisher clients only displayed content that  
 24 adhered to Google's policies on their websites. AdTrader ensured that its web publisher clients  
 25 adhered to Google's guidelines when displaying advertisements through AdX on their websites.  
 26 Furthermore, Google employees confirmed on multiple occasions to AdTrader employees (in-  
 27 person, by phone calls, by Internet chat, and by e-mail) that AdTrader's publisher websites were  
 28 in compliance with Google's policies.

1           135. As previously alleged in greater detail, AdTrader's substantial performance is also  
2 evidenced by the fact that most or all of its web publisher clients that monetized their traffic  
3 through AdTrader's NPM AdX account are still in good standing with Google with their own  
4 individual AdX and AdSense accounts (and Google continues to serve ads to those individual  
5 accounts to this very day). If AdTrader were truly in violation of some Google policy, then its  
6 individual web publishers would also be in violation of Google policies since both the websites  
7 and policies in question are identical. But since all of their individual web publisher accounts are  
8 in good standing, that means Google has found that none of them have violated any Google  
9 policies. And if none of those individual web publisher accounts had violated any Google  
10 policies, then AdTrader could not have violated any Google policy either.

11           136. As previously alleged in greater detail, AdTrader's substantial performance is also  
12 evidenced by the fact that it never received any prior notice from Google of a breach of the  
13 Google Services Agreement. The only contractual grounds for Google to immediately terminate  
14 the contract is if a web publisher displays pornographic content on its website, and AdTrader has  
15 never had any of its website publishers display any pornographic content.

16           137. As previously alleged in greater detail, AdTrader's substantial performance is also  
17 evidenced by the fact that neither AdTrader, nor its advertising clients, have ever received a  
18 refund from Google for their advertisements placed through AdX on the websites owned by  
19 AdTrader's web publisher clients.

20           138. In breach of the Google Services Agreement, Google failed to pay AdTrader for  
21 the number of valid impressions of advertisements displayed on those websites, and/or other valid  
22 events performed in connection with the display of advertisements on those websites using  
23 Google's AdX program.

24           139. Per the express terms of the Google Services Agreement, Google could withhold  
25 AdTrader's accrued AdX earnings only for "(i) invalid queries, impressions, conversions, or  
26 clicks, and (ii) any amounts refunded to advertisers in connection with Company's failure to  
27 comply with this Agreement, as reasonably determined by Google." Google's notice of violation  
28

1 did not even accuse AdTrader of having invalid queries, impressions, conversions, or clicks. And  
2 Google also did not refund to advertisers the amounts it withheld from AdTrader.

3 140. As a proximate result of Google's breach of contract, AdTrader has been damaged  
4 by \$476,622.69 – the amount of the accrued AdX earnings that Google withheld from AdTrader.

5 141. In addition, Google's breach of contract has resulted in lost profits to AdTrader's  
6 business as a whole. AdTrader's monetization operation for publishers has disintegrated, and  
7 AdTrader has thus lost out on all future business from its clients. AdTrader has also lost out on  
8 future business from other publishing clients that had reached out to the company for its products  
9 and services.

10 142. Google was fully aware that its breach of contract could result in lost future profits  
11 for AdTrader. The AdX program specifically contemplates that participants would include  
12 businesses that manage monetization of on-line advertising for web publishers. It therefore is  
13 foreseeable that a failure by Google to pay an NPM the amounts owed to it under the AdX  
14 program would result in a loss of future business to that NPM.

15 143. AdTrader also brings a breach of contract claim because Google has withheld all  
16 of its accrued earnings as an improper forfeiture.

17 144. Per the Google Service Agreement, Google could withhold only those accrued  
18 earnings that were the product of invalid activity, and could not penalize an AdX publisher by  
19 withholding all of its accrued earnings merely because some of those earnings were the result of  
20 invalid activity. Google's actions necessarily meant that it failed to reasonably determine how  
21 much to withhold in accrued earnings from AdTrader, even assuming all of Google's other  
22 actions were valid. Google simply decided to withhold the entire amount of the accrued earnings  
23 regardless of the fact that the vast majority of those earnings could not have stemmed from any  
24 invalid activity, for the reasons previously alleged in greater detail. Furthermore, Google refused  
25 to provide to AdTrader any substantive information about AdTrader's purported violations in  
26 order to prevent AdTrader from raising a meaningful challenge about the reasonableness of  
27 Google's actions.  
28

145. In addition, if Mr. Nakache was telling the truth during his May 24, 2017 phone call Google would not pay out AdTrader's withheld earnings regardless of the outcome of its internal appeal with Google, then those actions also breach the Google Services Agreement because it demonstrates that Google failed to reasonably determine how much to withhold in accrued earnings from AdTrader.

146. Indeed, by contrast, Google's contract with its AdSense publishers (called the AdSense Terms of Service) state the exact opposite. For example, in that contract, Google expressly reserved the right to "withhold unpaid amounts" in the event it terminates that agreement due to a publisher engaging in invalid activity.

147. As a proximate result of Google's breach of contract, AdTrader has been damaged in the amount of the accrued AdX earnings that Google withheld from it that were not related to any invalid activity on its publishers' websites.

**SECOND CAUSE OF ACTION:**  
**Breach of the Implied Covenant of Good Faith and Fair Dealing**  
**(Google Services Agreement)**  
**by AdTrader against Google**  
**(Individual Claim)**

148. Plaintiffs hereby re-incorporate and re-allege all the preceding paragraphs as if fully set forth herein.

149. As previously alleged in greater detail, AdTrader and Google entered into the Google Services Agreement, and AdTrader substantially performed under that contract.

150. There exists in every contract, including Google's Services Agreement with AdTrader, an implied covenant of good faith and fair dealing, requiring that each party not do anything to unfairly interfere with the right of the other party to receive the benefits of the contract.

151. As previously alleged in greater detail, in breach of the implied covenant, Google unfairly frustrated AdTrader's right to receive its accrued revenue by arbitrarily and capriciously withholding AdTrader's AdX earnings for alleged policy violations, while simultaneously finding that AdTrader's publisher clients were (and still are) in full compliance with Google's policies despite displaying the exact same content and advertising layouts. If AdTrader had, in fact,

1 violated an AdX policy, then at least some of its publisher clients necessarily would also have had  
2 their individual accounts disabled, because AdTrader (as a NPM) only worked on the websites of  
3 its publisher clients. The fact that none of AdTrader's publisher clients suffered a similar fate is  
4 proof that AdTrader did not, in fact, violate any Google policies and that Google withheld its  
5 earnings in bad faith.

6 152. As previously alleged in greater detail, in breach of the implied covenant, Google  
7 unfairly frustrated AdTrader's right to receive its accrued revenue by refusing to provide the  
8 specific reasons for withholding its revenue, ceasing all communications with AdTrader, and  
9 refusing to provide any meaningful opportunity to appeal Google's decision. In particular,  
10 Google's violation notice to AdTrader was exceedingly vague, and as a matter of policy, Google  
11 refused to provide AdTrader with any information about its account activity after its account was  
12 disabled. Google also as a matter of policy, ceased all communications with AdTrader after  
13 Google had disabled AdTrader's account and withheld its earnings. Google has publicly admitted  
14 that publishers have a right to appeal their cases, but because Google refused to inform AdTrader  
15 of exactly what it did wrong, AdTrader was deprived of any meaningful opportunity to appeal its  
16 case. Moreover, Google's standardized, pro forma appeal form did not permit AdTrader to  
17 elaborate on why Google's termination and withholding decision was erroneous, which in all  
18 events, was summarily rejected by Google by means of an auto-generated email, without a good  
19 faith review.

20 153. As previously alleged in greater detail, Google breached its duty of good faith and  
21 fair dealing because it affirmatively misrepresented to AdTrader that it could not pay out any of  
22 AdTrader's withheld earnings because those withheld earnings had supposedly been refunded to  
23 Google's advertisers.

24 154. In addition, AdTrader also pleads a breach of the implied covenant claim in the  
25 alternative in the event that it is determined that Google did not breach its express contractual  
26 obligations to AdTrader when it withheld all of AdTrader's accrued AdX earnings instead of just  
27 those earnings that were the result of supposedly invalid activity. Instead of withholding only  
28 those accrued AdX earnings supposedly attributable to invalid activity, Google withholds all

1 accrued AdX earnings as a matter of uniform policy. Such actions violate the implied covenant  
2 of good faith and fair dealing towards AdTrader because Google is willfully withholding accrued  
3 AdX earnings that were obtained honestly and legitimately by AdTrader.

4 155. Continuing to plead in the alternative, Google additionally violated the implied  
5 covenant of good faith and fair dealing towards AdTrader because when Google makes the  
6 determination that it will withhold the entirety of an AdX publisher's accrued earnings, as a  
7 matter of policy, there is nothing that publisher can do to get its money. During the May 24, 2017  
8 phone call, Mr. Nakache expressly told AdTrader that regardless of the outcome of its internal  
9 appeal with Google, Google would not pay out AdTrader's withheld earnings. In other words,  
10 Google could concede that it had unjustly suspended/terminated AdTrader's account (the account  
11 suspension/termination being the only reason why the entirety of AdTrader's accrued earnings  
12 would be withheld), but Google would nonetheless refuse to pay AdTrader what it was owed.  
13 Thus, even if AdTrader had exclusively, or at least some, valid activity associated with its  
14 account for a particular earnings period, there was nothing it could do to get its accrued revenue  
15 for that valid activity from Google.

16 156. Google also violated the implied covenant of good faith and fair dealing towards  
17 AdTrader because when Google withholds the entirety of an AdX publisher's accrued earnings, it  
18 always makes this announcement on or around the day those earnings were supposed to be paid  
19 out instead of the date Google has determined that the publisher had violated a Google policy.  
20 For example, Google announced to another AdX publisher named Bulletin Marketing LLC that it  
21 was withholding the entirety of Bulletin Marketing's accrued earnings on or around the day those  
22 earnings were supposed to be paid out. Google has also demonstrated similar conduct to its  
23 AdSense publishers, as detailed in the pending matter of *Free Range Content v. Google*, No.  
24 5:14-CV-02329-BLF (N.D. Cal.), and as experienced by other AdSense publishers such as  
25 Pubshare, Super Cray, eOnline, and others.

26 157. Moreover, Google could and did detect any such invalid activity prior to the date  
27 earnings were due to be paid. In fact, Google itself claims in its Google Ads Traffic Quality  
28 webpage (Exhibit 6) that it detects "the vast majority of invalid traffic in real time or soon



1 after[.]” Google also claims that in its Google Ads Ad Traffic Quality Resource Center webpage  
2 (Exhibit 7) that it engages in “proactive monitoring of both advertiser and publisher networks,”  
3 and “carefully monitors all clicks and impressions on ads.” Mr. Pradeep had also confirmed that  
4 Google only detected invalid activity in real-time (i.e., “proactive filtering).

5 158. Google deliberately forced AdTrader to expend resources and time on continuing  
6 to display AdX advertisements and acquiring traffic to its websites when Google had already  
7 internally decided it would not pay out any AdX revenue to AdTrader under any circumstances.  
8 Google does this because when it confiscates the funds from a publisher and refunds them back to  
9 the advertiser (assuming that Google does, in fact, provide such refunds), it effectively and  
10 substantially lowers that advertiser’s cost of advertising, **at the publisher’s, not Google’s**  
11 expense. That is, the advertiser still received the impression or click from the person who was  
12 browsing the publisher’s website, but did not have to pay for it. Through this process, Google  
13 earns substantial goodwill from its advertiser customer base, and obtains a competitive advantage  
14 vis-à-vis its competitors in the online advertising business who do not confiscate their publishers’  
15 accrued earnings and kick them back to the advertiser.

16 159. As a proximate result of Google’s breach of the implied covenant, AdTrader has  
17 been damaged by approximately \$476,622.69 – the amount of the accrued AdX earnings that  
18 Google withheld from AdTrader.

19 160. In addition, Google’s breach of the implied covenant has resulted in lost profits to  
20 AdTrader’s business as a whole. AdTrader’s monetization operation for publishers has  
21 disintegrated, and AdTrader has thus lost out on all future business from its clients. AdTrader has  
22 also lost out on future business from other publishing clients that had reached out to the company  
23 for its products and services.

24 161. Google was fully aware that its breach of the implied covenant could result in lost  
25 future profits for AdTrader. The AdX program specifically contemplates that participants would  
26 include businesses that manage monetization of on-line advertising for web publishers. It  
27 therefore is foreseeable that a failure by Google to pay NPMs the amounts owed to them under  
28 the AdX program would result in a loss of future business to those NPMs.



**THIRD CAUSE OF ACTION:**  
**Breach of the Implied Duty to Perform with Reasonable Care**  
**(Google Services Agreement)**  
**by AdTrader against Google**  
**(Individual Claim)**

162. Plaintiffs hereby re-incorporate and re-allege all the preceding paragraphs as if fully set forth herein.

163. AdTrader brings this claim for breach of implied duty to perform with reasonable care, in the alternative should the Court find that the Google Services Agreement does not impose an express contractual obligation on Google to “reasonably determine” how much of AdTrader’s accrued earnings it could withhold on the basis of “invalid queries, impressions, conversions, or clicks.” And even if the Court finds that the contract does impose such an express contractual obligation upon Google, then AdTrader brings this claim in the alternative so that it can elect between contract and tort remedies against Google.

164. As previously alleged in greater detail, AdTrader entered into the Google Services Agreement and substantially performed under that contract.

165. Google had a contractual obligation to pay AdTrader its accrued earnings and could withhold only payments for “invalid queries, impressions, conversions, or clicks” and “amounts refunded to advertisers in connection with [AdTrader’s purported] failure to comply with [the Google Services Agreement], as reasonably determined by Google.” This obligation arises from the language of Section 8.2(b) of the Google Services Agreement.

166. Under California law, Google was required to perform its contractual obligations competently and with reasonable care. Google breached these duties by withholding all of AdTrader’s accrued AdX earnings, instead of only those earnings attributable to any invalid queries, impressions, conversions, or clicks on AdTrader’s publisher’s websites and amounts refunded to advertisers.

167. Had Google used reasonable care in performing its obligations, it would have not withheld the entirety of AdTrader’s accrued AdX earnings, but only those earnings attributable to any invalid queries, impressions, conversions, or clicks on AdTrader’s publisher’s websites and amounts refunded to advertisers. Google could easily do this, because its software tracks – with

1 granular detail – all impressions and clicks on every single publisher webpage and thus Google  
 2 knows exactly which impressions and clicks on a particular webpage are invalid, and which  
 3 impressions and clicks are valid. Instead, as a matter of company policy, Google did a blanket  
 4 withholding of all AdTrader’s accrued AdX publisher earnings.

5 168. As a proximate result of Google’s breach of contract, AdTrader has been damaged  
 6 in the amount of the accrued AdX earnings that Google withheld from it that were not related to  
 7 any invalid activity on its publishers’ websites.

8 **FOURTH CAUSE OF ACTION:**  
 9 **Intentional Interference with Contract**  
 10 **by AdTrader against Google**  
 11 **(Individual Claim)**

12 169. Plaintiffs hereby re-incorporate and re-allege all the preceding paragraphs as if  
 13 fully set forth herein.

14 170. As previously alleged in greater detail, AdTrader and DingIt had a contractual  
 15 relationship. AdTrader helped DingIt optimize the monetization of its content through AdX.  
 16 Furthermore, that contract was solely for the provision of AdX-related services. DingIt did not  
 17 ask AdTrader to assist with monetizing its content on any other advertising platforms or  
 18 exchanges.

19 171. As previously alleged in greater detail, Google knew of the existence of  
 20 AdTrader’s contract with DingIt. AdTrader employees, on several occasions, informed Google  
 21 about the existence of this relationship and even directly introduced DingIt’s Vice President of  
 22 Content & Marketing to AdTrader’s AdX account manager on May 15, 2017 after Google forced  
 23 them to. In addition, DingIt informed Google on May 17, 2017 of the existence of the contractual  
 24 relationship and DingIt’s intent to exclusively use AdTrader’s services to monetize its traffic  
 25 through AdX going forward.

26 172. AdTrader also had contractual relationships with over 200 other web publishers  
 27 during the period of April 1, 2017 through May 31, 2017. These publishers included:  
 28 6okolad.com; 9kefa.com; 19min.bg; Advertisea.com; Allthatboots.com; Ambito.com;  
 Asiatoday.co.kr; Astrohoroscope.info; Athletic.net; Az-jenata.bg; Babskeveci.sk; Baomoi.com;

1 Bbms.bg; Bet-portal.net; Bgathletic.com; Bgbasket.com; Bgflash.com; Bgfootball.com;  
 2 Bgmaps.com; Bgnes.com; Bgswim.info; Bgvest.info; Bgvolleyball.com; Blitz.bg; Blog.bg;  
 3 BollywoodGaram.com; Bonapeti.bg; Booksbg.org; Briag.bg; Briagnews.bg; Building.bg;  
 4 Bultimes.com; Businessnews.bg; Businessrays.com; Calculator.bg; Cheezburger.com; Chefs.bg;  
 5 Chirpstory.com; Choiceorlife.com; Classifiedny.com; Cram.com; Cz.ign.com;  
 6 Designsponge.com; Dieti.info; Dinnerism.com; Dir.bg; Dnes.bg; Dnesbg.net; Dubizzle.com;  
 7 Ebaumsworld.com; Englobing.com; Filmon.com; Football24.bg; Front.bg; Ghanasoccernet.com;  
 8 Gledavalnik.com; Gol.bg; Gravitytales.com; Gwarnet.com; Huvle.com; Ibtimes.co.in;  
 9 Ibtimes.co.uk; Ibtimes.com; Idigitaltimes.com; Ign.com; Igraigo.com; Ikonomist.bg; Ina-  
 10 online.net; Infojobs.com.br; Informiran365.net; Infostock.co.kr; Interez.sk; Investor.bg; Jenata-  
 11 vchas.net; Juventusmania1897.com; Kangarooclassifieds.com; Kmib.co.kr; Kpd.bg;  
 12 Lavozy.com.ar; Lekuvai.bg; Lifebg.net; Ludsport.net; M.incheonilbo.com; Medicaldaily.com;  
 13 Mediapen.com; Mediatoday.co.kr; Mignews.info; Minterfootball.heraldcorp.com;  
 14 Minutouno.com; Moneyfeedsme.com; Mosen.mt.co.kr; Msportalkorea.mt.co.kr;  
 15 Mydotcomrade.com; Myhealthy.tips; Mytime.bg; Nedvijim.com; Newsnbuzz.com;  
 16 Newsweek.com; Nzfreeads.com; Ok.de; Olx.bg; Olca.co.uk; Olx.co.ke; Olx.co.za; Olx.com.bh;  
 17 Olx.com.eg; Olx.com.gh; Olx.com.pk; Olx.com.kw; Olx.com.ng; Olx.com.om; Olx.com.pk;  
 18 Olx.qa; Olx.sa.com; Olxliban.com; Onlinevideocollectionz.com; Op.gg; Ovguide.com; Petel.bg;  
 19 Pitanka.net; Plovdivderby.com; Politikata.net; Postshare.co.id; Prochetime.com; Puls.bg;  
 20 Rabota.bg; Realniistorii.com; Roditel.bg; Rhymeswithsnitch.com; Saveti.info; Sedaily.com;  
 21 Scoresinlive.com; Segye.com; Skafeto.com; Snimka.bg; Sportmedia.tv; Sportsseoul.com;  
 22 Standartnews.com; Star.mt.co.kr; Stars.bg; Start.bg; Steep.tv; Struma.co; Struma.com;  
 23 Strumarela.com; Studymode.com; Tennis24.bg; Termo.bg; Tf.co.kr; Thatnotfood.com;  
 24 Thecelebbuzz.com; Thecongressing.com; Thejama.com; Themainline.bg; Thetop.tv; Tia.bg;  
 25 Todayshealth.buzz; Topgear.bg; Trend-guru.com; Variance.tv; Vchas.net; Viasport.bg;  
 26 Videoclip.bg; Vijaytamil.net; Voinata.com; Yahoo.com; Zapernik.com; Zdrava.bg;  
 27 Zemedelski.com; and Zevzeci.net (collectively, the “Web Publishers”).  
 28

1           173. All of the Web Publishers had signed an identical contract with AdTrader. A true  
2 and correct copy of the AdTrader Ad Supply Agreement template used for each of these Web  
3 Publishers is attached hereto as Exhibit 10.

4           174. Google was aware of each contractual relationship between AdTrader and each of  
5 the Web Publishers, because it previously required AdTrader to register each Web Publisher in  
6 AdX as part of AdTrader's obligations as an NPM to register each of its publisher partners.  
7 AdTrader also helped the Web Publishers optimize the monetization of their content through  
8 AdX.

9           175. Google's decision to withhold AdTrader's accrued AdX earnings made  
10 AdTrader's further performance under its contractual relationship with DingIt impossible, or at  
11 least extremely difficult, as DingIt stopped using AdTrader any further when AdTrader was  
12 unable to remit the full amount of earnings owed to DingIt.

13           176. AdTrader experienced similar difficulties with the Web Publishers. Google's  
14 decision to withhold AdTrader's accrued AdX earnings, made AdTrader's further performance  
15 under its contractual relationship with the Web Publishers impossible, or at least extremely  
16 difficult, because now depleted of funds, AdTrader was unable to operate in the same capacity  
17 and deliver the same results to the Web Publishers. The Web Publishers declined to further use  
18 AdTrader afterwards.

19           177. Google knew that its actions would disrupt AdTrader's performance under its  
20 contracts. Google had extensively worked with AdTrader for nearly four years by that point in  
21 time and knew that withholding any accrued AdX earnings would prevent AdTrader from  
22 fulfilling its contractual duties to any of its Web Publisher clients, let alone DingIt. Furthermore,  
23 Google has extensively worked with NPM managers similar to AdTrader for years, and was  
24 familiar enough with the business model of these companies to know that withholding accrued  
25 earnings would cripple these businesses.

26           178. On information and belief, Google intended to disrupt AdTrader's relationship  
27 with DingIt and with the Web Publishers. In particular, DingIt, and its parent company Level Up  
28 Media, is one of the leading video hosting services for e-sports. Google typically has a direct

1 relationship with major website publishers and helps those publishers monetize their properties on  
 2 AdX (i.e., the same types of services that NPMs like AdTrader provide). Google thus had  
 3 financial incentives to cause DingIt to directly turn to Google for AdX services (or to a preferred  
 4 AdX partner that is typically owned by ex-Google employees), and it is not a coincidence that  
 5 Google terminated AdTrader's account on May 19, 2017, only a few days after Google's direct  
 6 interactions with DingIt.

7 179. AdTrader was harmed as a result of Google's interference. Google's actions  
 8 caused AdTrader to lose the DingIt account and the Web Publishers accounts, and the millions of  
 9 dollars in revenue that these accounts represented. Indeed, just prior to AdTrader's account  
 10 termination, DingIt informed it that it was going to utilize AdTrader's services that would have  
 11 generated an estimated \$6 million in revenue for AdTrader through the rest of 2017 by itself.  
 12 And just continuing this relationship would have been worth tens of millions of dollars in annual  
 13 revenue for AdTrader. AdTrader also had an annual revenue run rate of several million dollars  
 14 with the Web Publishers.

15 180. Google's actions towards AdTrader reflects that it acted with malice, oppression,  
 16 or fraud toward AdTrader.

17 **FIFTH CAUSE OF ACTION:**  
 18 **Intentional Interference with Prospective Economic Advantage**  
 19 **by AdTrader against Google**  
 20 **(Individual Claim)**

21 181. Plaintiffs hereby re-incorporate and re-allege all the preceding paragraphs as if  
 22 fully set forth herein. Plaintiffs plead these allegations in the alternative in the event it is  
 23 determined that AdTrader did not have a contractual relationship with DingIt or any of the Web  
 24 Publishers.

25 182. As previously alleged in greater detail, AdTrader and DingIt had an economic  
 26 relationship. AdTrader helped DingIt optimize the monetization of its content through AdX.  
 27 Similarly, AdTrader and the Web Publishers had an economic relationship. AdTrader helped the  
 28 Web Publishers optimize the monetization of their content through AdX.

1           183. As previously alleged in greater detail, Google knew of the existence of  
2 AdTrader's economic relationship with DingIt, and also with the Web Publishers. AdTrader  
3 employees, on several occasions, informed Google about the existence of this relationship and  
4 even directly introduced DingIt's Vice President of Content & Marketing to AdTrader's AdX  
5 account manager on May 15, 2017. In addition, DingIt informed Google on May 17, 2017 of the  
6 existence of the economic relationship and DingIt's intent to exclusively use AdTrader's services  
7 for monetization via AdX going forward. As for the Web Publishers, AdTrader had previously  
8 disclosed their existence and economic relationship to Google, as it was required to do as an  
9 NPM.

10           184. Google's decision to withhold AdTrader's accrued AdX earnings disrupted the  
11 economic relationship between AdTrader and DingIt, as DingIt stopped using AdTrader any  
12 further when AdTrader was unable to remit the full amount of earnings owed to DingIt.

13           185. This action also disrupted the economic relationship between AdTrader and the  
14 Web Publishers, because now depleted of funds, AdTrader was unable to operate in the same  
15 capacity and deliver the same results to the Web Publishers. The Web Publishers declined to  
16 further use AdTrader afterwards.

17           186. Google knew that its actions would disrupt AdTrader's relationship with DingIt  
18 and with the Web Publishers. Google had extensively worked with AdTrader for nearly four  
19 years by that point in time and knew that withholding any accrued AdX earnings would prevent  
20 AdTrader from being able to fulfill any future contractual duties to any of its Web Publisher  
21 clients, let alone DingIt. Furthermore, Google has extensively worked with NPM managers  
22 similar to AdTrader for years, and was familiar enough with the business model of these  
23 companies to know that withholding accrued earnings would cripple these businesses.

24           187. On information and belief, Google intended to disrupt AdTrader's relationship  
25 with DingIt and with the Web Publishers. In particular, DingIt, and its parent company Level Up  
26 Media, is one of the leading video hosting services for e-sports. Google typically has a direct  
27 relationship with major website publishers and helps those publishers monetize their properties on  
28 AdX (i.e., the same types of services that managers like AdTrader provide). Google thus had

1 financial incentives to cause DingIt to directly turn to Google for AdX services (or to a preferred  
2 AdX partner that is typically owned by ex-Google employees), and it is not a coincidence that  
3 Google terminated AdTrader's account on May 19, 2017, only a few days after Google's direct  
4 interactions with DingIt.

5 188. Google engaged in independently wrongful conduct in disrupting AdTrader's  
6 relationship with DingIt and with the Web Publishers. As previously alleged in greater detail,  
7 Google breached its implied covenant of good faith and fair dealing, and also its implied duty to  
8 perform with reasonable care, in terminating AdTrader's AdX account and withholding its  
9 accrued AdX earnings. Google also deliberately provided false reasons to AdTrader for  
10 terminating its AdX account and withholding its accrued earnings, including the demonstrably  
11 false statement that all of AdTrader's accrued AdX earnings had already been refunded to  
12 Google's advertisers. Google's conduct in disrupting AdTrader's relationship with DingIt and  
13 with the Web Publishers also constitutes a violation of California's unfair competition law, as  
14 further alleged herein.

15 189. AdTrader was harmed as a result of Google's interference. Google's actions  
16 caused AdTrader to lose the DingIt account and the Web Publishers accounts, and the millions of  
17 dollars in revenue that these accounts represented. Indeed, just prior to AdTrader's account  
18 termination, DingIt informed it that it was going to utilize AdTrader's services that would have  
19 generated an estimated \$6 million in revenue for AdTrader through the rest of 2017 by itself.  
20 And just continuing this relationship would have been worth tens of millions of dollars in annual  
21 revenue for AdTrader. AdTrader also had an annual revenue run rate of several million dollars  
22 with the Web Publishers.

23 190. Google's actions towards AdTrader reflects that it acted with malice, oppression,  
24 or fraud toward AdTrader.



**SIXTH CAUSE OF ACTION:**  
**Declaratory Relief**  
**by AdTrader against Google**  
**(Individual Claim)**

191. Plaintiffs hereby re-incorporate and re-allege all the preceding paragraphs as if fully set forth herein.

192. The Google Service Agreement includes a Limitation of Liability provision that exempts Google from liability for any “lost revenues or indirect, special, incidental, consequential, exemplary, or punitive damages[.]” The Limitation of Liability also states that liability is limited to no more “than the net amount that [Google] has received and retained under this Agreement during the 12 months before the claim arises.”

193. Google has invoked this Limitation of Liability clause in other lawsuits brought by AdSense or AdX publishers to argue that it owes no liability to those publishers. It is expected that Google will invoke that provision in this lawsuit as well.

194. AdTrader seeks a declaration that this Limitation of Liability clause is substantively and procedurally unconscionable and therefore unenforceable under principles of California contract law.

195. The Limitation of Liability clause is substantively unconscionable because it is transparently one-sided in favor of Google. There are no instances in which an AdX publisher could engage in conduct that could cause “consequential, special, indirect, exemplary or punitive” damages to Google. Indeed, Google has never even brought a claim or lawsuit against an AdX publisher that could have resulted in consequential, special, indirect, exemplary or punitive damages. Nor has Google ever experienced a material loss in revenue from advertisers as a result of an ad running on a publisher webpage that contained material thought by some to be inappropriate or offensive. These terms therefore operate only for Google’s benefit and to the detriment of AdX publishers.

196. If there were any means by which an AdX publisher’s conduct could conceivably cause more-than-compensatory damages to Google, Google has expressly exempted such examples from the Limitation of Liability clause. For example, the Google Services Agreement explicitly excludes from the Limitations of Liability clause “breaches of confidentiality

obligations contained in this Agreement, violations of a party's Intellectual Property Rights by the other party, or indemnification obligations contained in this Agreement[.]” Each of the examples inures solely to the benefit of Google. No publisher could possibly disclose confidential information to Google (as their entire business model is to publish content on the Internet), whereas Google regards even their most banal internal e-mails to be confidential (as evidenced by the fact that in every lawsuit it is involved in, Google marks almost all of its internal documents to be “Confidential” or “Attorney’s Eyes Only” regardless of the actual content of those documents). Similarly, Google is not in any conceivable position to violate any intellectual property rights held by a publisher whereas the various AdX platforms and their interfaces are considered by Google to be their proprietary intellectual property.

197. The examples of indemnification provided in the agreement also make it clear that there is no likely scenario where a publisher could require Google to provide indemnification from a third-party lawsuit. Thus, the Limitations of Liability are authored to give off the illusion of bilateralism, but in substance operate solely to prevent publishers from recovering their damages due to Google’s wrongful conduct.

198. The Limitation of Liability clause is procedurally unconscionable for many reasons, including that it is presented as a take-it-or-leave it provision to AdX publishers. And given that Google has a virtual monopoly in the field of on-line advertising, anyone who wishes to monetize their websites through advertising has to use AdX (or AdSense, which has a virtually identical Limitation of Liability clause).

#### **SEVENTH CAUSE OF ACTION:**

##### **Fraud**

##### **by Plaintiffs against Google (Class Action Claim)**

199. Plaintiffs hereby re-incorporate and re-allege all the preceding paragraphs as if fully set forth herein.

200. Plaintiffs brings this claim of fraud on behalf of themselves and all members of the Advertiser Class.

1           201. As previously alleged in greater detail, Google represented to Plaintiffs, and all  
2 other members of the Advertiser Class, that it performed “offline analysis” of its advertising  
3 networks to ascertain whether any clicks on an advertisement was invalid.” Google also  
4 represented to Plaintiffs, and all other members of the Advertiser Class, that it would refund or  
5 give credits to them for invalid impressions and clicks.

6           202. As previously alleged in greater detail, Google’s representations were made to  
7 Plaintiffs, and all other members of the Advertiser Class when they first entered into the  
8 DoubleClick Advertising Platform Agreement, the DoubleClick Ad Exchange Master Service  
9 Agreement, and/or the Google Inc. Advertising Program Terms, and were continually reaffirmed  
10 by Google afterwards.

11           203. As an advertising agency / advertising network, Google knew that AdTrader  
12 served as the agent for numerous advertisers such as Classic, LML, Ad Crunch, and Fresh Break.  
13 Indeed, Google knows exactly who all of AdTrader’s advertising clients are, because AdTrader is  
14 required to separately register them in DBM. When Google issues DBM invoices, each of  
15 AdTrader’s advertising clients are identified by name and by a unique id number. Thus, Google  
16 knew that any representations it made to AdTrader would be as if it had made those  
17 representations directly to those advertisers.

18           204. As previously alleged in greater detail, Google’s representations were false when  
19 made. As Google employee Paschal Pradeep confirmed to AdTrader on June 2, 2017, in DBM,  
20 there was actually no way for Google or anyone else to check on invalid impressions and clicks  
21 (i.e., the “offline analysis” mentioned in Google’s representation) because DBM (the product that  
22 handles the vast majority of ad buys on AdX) only does real-time filtering of invalid impressions  
23 and clicks, and it apparently has always been that way. In other words, from the very beginning,  
24 Google never had the ability to do “offline analysis” – or, at least, never had the ability to do  
25 “offline analysis” for advertisers using DBM to buy ad space with AdX publishers.

26           205. As previously alleged in greater detail, Google’s representations were also false  
27 when made because Google apparently has never provided any credits or refunds to advertisers  
28 for impressions or clicks that Google has represented to its publishers as having been fraudulent

1 or otherwise invalid. For example, AdTrader, Classic, LML, Ad Crunch, and Fresh Break have  
2 never received any credits or refunds for invalid clicks or impressions even though (i) Google  
3 disabled AdTrader's NPM publisher account and withheld \$476,622.69 in accrued earnings for  
4 supposedly invalid activity and (ii) every month, Google would adjust AdTrader's accrued  
5 earnings (or the earnings of AdTrader's publisher clients accrued on their individual AdX or  
6 AdSense accounts) by a small amount to reflect deductions for supposedly invalid activity.

7 206. Moreover, the contemporaneous falsity of Google's representations is also  
8 evidenced by its December 13, 2017 statement to the news media, where it admitted that its  
9 policy of providing refunds to advertisers for invalid traffic was only now "**currently being**  
10 **expanded to include ads purchased via DoubleClick Bid Manager.**" Clearly, at least for ads  
11 bought via DBM (which is where the majority of ad buys for AdX take place), Google was  
12 acknowledging that it previously never provided refunds for such ads.

13 207. And as revealed in the August 25, 2017 Wall Street Journal article, Google is  
14 refunding to its advertisers only 7-10% of the amounts they paid to Google for advertisements  
15 that were served to invalid traffic (i.e., the platform fee) rather than the entire amount. In fact,  
16 even Google's stated reason for limiting refunds to 7-10% of the total amount paid for invalid  
17 traffic – that Google "doesn't control the rest of the money spent" – is itself false, as Google  
18 confiscated all of the accrued earnings of AdTrader, as well as other AdX publishers, whenever it  
19 accuses them of having invalid activity on their websites. Moreover, as previously alleged in  
20 greater detail, a majority of all advertising expenditures made through DBM is directed by  
21 Google to AdX. So while Google is claiming to publishers that it cannot pay out the entirety of  
22 their accrued earnings because such amounts have already been refunded to advertisers, it is  
23 simultaneously claiming to advertisers that it is able to refund them only a fraction of that  
24 amount. Google appears to be keeping the difference for itself.

25 208. On information and belief, SCB has never received full refunds for any  
26 advertisements that they placed on an AdX publisher's website that was internally marked by  
27 Google as having invalid impressions or clicks. As previously alleged in greater detail, Google  
28 provides no transparency when it gives refunds or credits to its AdWords advertisers. And based

1 on all the evidence uncovered so far, it is likely that SCB did not receive at least full refunds or  
2 credits for any ad impressions or clicks it had on an AdX publisher's website that was internally  
3 marked by Google as having invalid impressions or clicks.

4 209. Google knew that its representations were false when made, or at the very least,  
5 made those representations recklessly and without regard for their truth. Having developed and  
6 operated the DBM, AdX, and AdWords software, Google obviously was well aware at all times  
7 that (i) they do not perform any "offline analysis" of invalid activity and (ii) Google's practice  
8 was to keep all, or almost all, of the confiscated earnings from its AdX and AdSense publishers.  
9 To this very day, Google continues to make the same misrepresentations on its webpages.

10 210. Moreover, Google's awareness that its representations were false when made is  
11 also evidenced by its December 13, 2017 admission to the news media that it had never before  
12 provided refunds for DBM users.

13 211. Google's awareness that its representations were false when made is also  
14 demonstrated by its conduct after the August 25, 2017 Wall Street Journal article was published.  
15 Within days, Google attempted to unilaterally impose sweeping changes to the AdWords  
16 Agreement to (1) bar its advertisers from filing any class actions against it and (2) impose an  
17 arbitration agreement that had a retroactive effect, despite Google's prior contractual promise that  
18 any changes to its contractual terms would only apply prospectively.

19 212. Further reflecting on its inherent corporate mentality, Google was also recently  
20 given a record fine (€2.42 billion) by the European Commission for manipulating its Google  
21 Shopping results, and there is an ongoing European Commission investigation over its  
22 manipulation of results for its AdSense for Search program. Similarly, in 2014, Google agreed to  
23 a settlement with the Federal Trade Commission where it would pay at least \$19 million to  
24 reimburse parents who were forced to pay large bills following unauthorized in-app purchases by  
25 their children. As this FTC proceeding revealed, Google employees had jocularly referred  
26 amongst themselves to this practice as "friendly fraud" or "family fraud."

27 213. Google intended to have Plaintiffs and the members of the Advertiser Class rely on  
28 its representations. As stated already, Google representatives repeatedly refer customers and

1 potential customers to its webpages whenever those customers have questions about how Google  
2 is ensuring that their advertising spend is not being wasted on fraudulent or invalid traffic. In  
3 particular, referring existing advertisers to these webpages is meant to assuage their concerns  
4 about invalid clicks so that they continue to participate in AdX or AdWords and continue to pay  
5 Google for on-line advertising. Furthermore, as Google knew that AdTrader served as the agent  
6 for numerous advertisers, it also knew that AdTrader was relying on such representations both in  
7 its own capacity and also on behalf of its advertising clients.

8 214. As previously alleged in greater detail, Plaintiffs and the members of the  
9 Advertiser Class relied upon Google's representations in deciding to enter the various advertising  
10 contracts with Google, and in deciding to maintain or increase their advertising expenditures  
11 through AdX.

12 215. Plaintiffs and the members of the Advertiser Class reasonably relied upon  
13 Google's representations. It is obvious that Google has superior knowledge of its DBM, AdX and  
14 AdWords software compared to anyone else, and thus its statements about that technology were  
15 viewed by everyone as authoritative and truthful. Moreover, it was not until August 25, 2017 that  
16 it became public knowledge that Google did not give complete refunds or credits to its advertisers  
17 for payments that were triggered by what it had determined to be invalid activity.

18 216. For their part, Plaintiffs had no inside information allowing them to know what  
19 was going on prior to August 25, 2017, and Google's lack of transparency kept Plaintiffs in the  
20 dark about how the internal mechanics of AdX worked. For example, the percentage of invalid  
21 traffic on AdTrader's publisher's websites was so miniscule every month, that it did not occur to  
22 anyone to scrutinize the monthly AdWords or DBM invoices to see if Google was offering any  
23 refunds or credits. For that matter, AdTrader's employees did not even know how refunds or  
24 credits were supposed to be reflected on any of Google's DBM invoices and it was not until they  
25 received Google's DBM invoice in early December 2017 did AdTrader understand that refunds  
26 would be reflected as a separate line item, rather than as an adjustment to a charge. As for  
27 Classic, LML, Ad Crunch, Fresh Break, and SCB none of them had any idea as to how credits or  
28 refunds were handled by Google.

217. Plaintiffs and the members of the Advertiser Class were damaged by Google's fraudulent conduct. They spent advertising funds on user traffic that Google claims (to its publishers anyway) to have been invalid and therefore derived no benefit from those expenditures, yet Google did not refund or credit those funds back to the advertisers as Google had promised. Instead, Google kept such funds for itself. Also, as an advertising agency, AdTrader was additionally damaged because it was not always reimbursed in full by its clients for its advertising expenditures made on their behalf, and receiving refunds from Google would have mitigated those losses. Furthermore, AdTrader's reputation as an advertising agency was damaged by not receiving refunds from Google for invalid traffic, because some of its clients associate the inability to obtain such refunds as a failing on AdTrader's part, not Google's part, and those clients choose to reduce or take away their business with AdTrader.

218. Plaintiffs and the other members of the Advertiser Class's reliance on Google's representation was a substantial factor in causing their harm. All of them would have chosen to not buy ad space through Google platforms, or would have at least spent less money on those platforms and increased their expenditures on competing platforms, had they known that Google would keep for itself all of their expenditures on user traffic that were fraudulent or otherwise invalid.

**EIGHTH CAUSE OF ACTION:**  
**Negligent Misrepresentation**  
**by Plaintiffs against Google**  
**(Class Action Claim)**

219. Plaintiffs hereby re-incorporate and re-allege all the preceding paragraphs as if fully set forth herein.

220. Plaintiffs brings this claim of negligent misrepresentation on behalf of themselves and all members of the Advertiser Class.

221. As previously alleged in greater detail, Google represented to Plaintiffs, and all other members of the Advertiser Class, that it performed "offline analysis" of its advertising networks to ascertain whether clicks on an advertisement were invalid. Google also represented



1 to AdTrader, and all other members of the Advertiser Class, that it would refund or give credits to  
2 them for invalid impressions and clicks.

3 222. As previously alleged in greater detail, Google's representations were made to  
4 AdTrader, and all other members of the Advertiser Class when they first entered into the  
5 DoubleClick Advertising Platform Agreement, the DoubleClick Ad Exchange Master Service  
6 Agreement, and/or the Google Inc. Advertising Program Terms, and were continually reaffirmed  
7 by Google afterwards.

8 223. As an advertising agency / advertising network, Google knew that AdTrader  
9 served as the agent for numerous advertisers such as Classic, LML, Ad Crunch, and Fresh Break.  
10 Indeed, Google knows exactly who all of AdTrader's advertising clients are, because AdTrader is  
11 required to separately register them in DBM. When Google issues DBM invoices, each of  
12 AdTrader's advertising clients are identified by name and by a unique id number. Thus, Google  
13 knew that any representations it made to AdTrader would be as if it had made those  
14 representations directly to those advertisers.

15 224. As previously alleged in greater detail, Google's representations were false when  
16 made. As Google employee Paschal Pradeep confirmed to AdTrader on June 2, 2017, in DBM,  
17 there was actually no way for Google or anyone else to check on invalid impressions and clicks  
18 (i.e., the "offline analysis" mentioned in Google's representation) because DBM only does real-  
19 time filtering of invalid impressions and clicks, and it apparently has always been that way. In  
20 other words, from the very beginning, Google never had the ability to do "offline analysis" – or,  
21 at least, never had the ability to do "offline analysis" for advertisers using DBM to buy ad space  
22 with AdX publishers.

23 225. As previously alleged in greater detail, Google's representations were also false  
24 when made because it does not provide any credits or refunds to advertisers for impressions or  
25 clicks that Google has represented to its publishers as having been fraudulent or otherwise  
26 invalid. For example, AdTrader, Classic, LML, Ad Crunch, and Fresh Break have never received  
27 any credits or refunds for invalid clicks or impressions through DBM from Google even though  
28 (i) Google disabled AdTrader's NPM publisher account and withheld \$476,622.69 in accrued

1 earnings for supposedly invalid activity and (ii) every month, Google would adjust AdTrader's  
2 accrued earnings (or the earnings of AdTrader's publisher clients accrued on their individual AdX  
3 or AdSense accounts) by a small amount to reflect deductions for supposedly invalid activity.

4 226. Moreover, the contemporaneous falsity of Google's representations is also  
5 evidenced by its December 13, 2017 statement to the news media, where it admitted that its  
6 policy of providing refunds to advertisers for invalid traffic was only now "**currently being**  
7 **expanded to include ads purchased via DoubleClick Bid Manager.**" Clearly, at least for ads  
8 bought via DBM (which is where the majority of ad buys for AdX take place), Google was  
9 acknowledging that it previously never provided refunds for such ads.

10 227. And as revealed in the August 25, 2017 Wall Street Journal article, Google is  
11 refunding to its advertisers only 7-10% of the amounts they paid to Google for advertisements  
12 that were served to invalid traffic rather than the entire amount. In fact, even Google's stated  
13 reason for limiting refunds to 7-10% of the total amount spent – that Google "doesn't control the  
14 rest of the money spent" – is itself false, as Google confiscates all of the accrued earnings of  
15 AdTrader, as well as other AdX publishers, whenever it accuses them of having invalid activity  
16 on their websites. Moreover, as previously alleged in greater detail, a majority of all advertising  
17 expenditures made through DBM is directed by Google to AdX. So while Google is claiming to  
18 publishers that it cannot pay out the entirety of their accrued earnings because such amounts have  
19 already been refunded to advertisers, it is simultaneously claiming to advertisers that it is able to  
20 refund them only a fraction of that amount. Google appears to be keeping the difference for  
21 itself.

22 228. On information and belief, SCB has never received full refunds or credits for any  
23 advertisements that it placed on an AdX publisher's website through AdWords that was internally  
24 marked by Google as having invalid impressions or clicks. As previously alleged in greater  
25 detail, Google provides no transparency when it gives refunds or credits to its AdWords  
26 advertisers. And based on all the evidence uncovered so far, it is likely that SCB did not receive  
27 at least full refunds or credits for any ad impressions or clicks it had on an AdX publisher's  
28 website that was internally marked by Google as having invalid impressions or clicks.

1           229. Google knew that it had no reasonable grounds for believing its representations  
2 were true when it made those representations. Having developed and operated the DBM, AdX  
3 and AdWords software, Google obviously was well aware at all times that (i) they do not perform  
4 any “offline analysis” of invalid activity and (ii) Google’s practice was to keep all, or almost all,  
5 of the confiscated earnings from its AdX and AdSense publishers. To this very day, Google  
6 continues to make the same misrepresentations on its webpages.

7           230. Moreover, Google’s awareness that its representations were false when made is  
8 also evidenced by its December 13, 2017 admission to the news media that it had never before  
9 provided refunds for DBM users.

10           231. Google’s awareness that its representations were false when made is also  
11 demonstrated by its conduct after the August 25, 2017 Wall Street Journal article was published.  
12 Within days, Google attempted to unilaterally impose sweeping changes to the AdWords  
13 Agreement to (1) bar its advertisers from filing any class actions against it and (2) impose an  
14 arbitration agreement that had a retroactive effect, despite Google’s prior contractual promise that  
15 any changes to its contractual terms would only apply prospectively.

16           232. Further reflecting on its inherent corporate mentality, Google was also recently  
17 given a record fine (€2.42 billion) by the European Commission for manipulating its Google  
18 Shopping results, and there is an ongoing European Commission investigation over its  
19 manipulation of results for its AdSense for Search program. Similarly, in 2014, Google agreed to  
20 a settlement with the Federal Trade Commission where it would pay at least \$19 million to  
21 reimburse parents who were forced to pay large bills following unauthorized in-app purchases by  
22 their children. As this FTC proceeding revealed, Google employees had jocularly referred  
23 amongst themselves to this practice as “friendly fraud” or “family fraud.”

24           233. Google intended to have Plaintiffs and the members of the Advertiser Class rely on  
25 its representations. As stated already, Google representatives repeatedly refer customers and  
26 potential customers to its webpages whenever those customers have questions about how Google  
27 is ensuring that their advertising spend is not being wasted on fraudulent or invalid traffic. In  
28 particular, referring existing advertisers to these webpages is meant to assuage their concerns

1 about invalid clicks so that they continue to participate in AdX or AdWords and continue to pay  
2 Google for on-line advertising. Furthermore, as Google knew that AdTrader served as the agent  
3 for numerous advertisers, it also knew that AdTrader was relying on such representations both in  
4 its own capacity and also on behalf of its advertising clients.

5 234. As previously alleged in greater detail, Plaintiffs and the members of the  
6 Advertiser Class relied upon Google's representations in deciding to enter the various advertising  
7 contracts with Google, and in deciding to maintain or increase their advertising expenditures  
8 through AdX.

9 235. Plaintiffs and the members of the Advertiser Class reasonably relied upon  
10 Google's representations. It is obvious that Google has superior knowledge of its DBM, AdX and  
11 AdWords software compared to anyone else, and thus its statements about that technology were  
12 viewed by everyone as authoritative and truthful. Moreover, it was not until August 25, 2017 that  
13 it became public knowledge that Google did not give complete refunds or credits to its advertisers  
14 for payments that were triggered by what it had determined to be invalid activity.

15 236. For their part, Plaintiffs had no inside information allowing them to know what  
16 was going on prior to August 25, 2017, and Google's lack of transparency kept Plaintiffs in the  
17 dark about how the internal mechanics of AdX worked. For example, the percentage of invalid  
18 traffic on AdTrader's publisher's websites was so miniscule every month, that it did not occur to  
19 anyone to scrutinize the monthly AdWords or DBM invoices to see if Google was offering any  
20 refunds or credits. For that matter, AdTrader's employees did not even know how refunds or  
21 credits were supposed to be reflected on any of Google's DBM invoices and it was not until they  
22 received Google's DBM invoice in early December 2017 did AdTrader understand that refunds  
23 would be reflected as a separate line item, rather than as an adjustment to a charge. As for  
24 Classic, LML, Ad Crunch, Fresh Break, and SCB none of them had any idea as to how credits or  
25 refunds were handled by Google.

26 237. Plaintiffs and the members of the Advertiser Class were damaged by Google's  
27 false representations. They spent advertising funds on user traffic that Google claims (to its  
28 publishers anyway) to be invalid and therefore derived no benefit from those expenditures, yet

Google did not refund or credit those funds back to them as Google had promised. Instead, Google kept such funds for itself. Also, as an advertising agency, AdTrader was additionally damaged because it was not always reimbursed in full by its clients for its advertising expenditures made on their behalf, and receiving refunds from Google would have mitigated those losses. Furthermore, AdTrader's reputation as an advertising agency was damaged by not receiving refunds from Google for invalid traffic, because some of its clients associate the inability to obtain such refunds as a failing on AdTrader's part, not Google's part, and those clients choose to reduce or take away their business with AdTrader.

238. Plaintiffs and the other members of the Advertiser Class's reliance on Google's representation was a substantial factor in causing their harm. All of them would have chosen to not buy ad space through Google platforms, or would have at least spent less money on those platforms and increased their expenditures on competing platforms, had they known that Google would keep for itself all of their expenditures on user traffic that was fraudulent or otherwise invalid.

**NINTH CAUSE OF ACTION:**  
**California Penal Code § 496(c)**  
**by Plaintiffs against Google**  
**(Class Action Claim)**

239. Plaintiffs hereby re-incorporate and re-allege all the preceding paragraphs as if fully set forth herein.

240. Under California law, a party may bring a private right of action against a defendant that fraudulently obtains that party's property (including money) by means of deception. Plaintiffs hereby bring such a claim on behalf of themselves and the other members of the Advertiser Class.

241. As previously alleged in greater detail, Google's actions in inducing Plaintiffs, and the other members of the Advertiser Class, into spending advertising funds on the DBM, AdX, and AdWords platforms constitute theft by deception under California law.

242. As previously alleged in greater detail, Plaintiffs, and the other members of the Advertiser Class, have been damaged as a result of Google's deception. Accordingly, they are entitled to treble damages and attorney's fees as a result.

**TENTH CAUSE OF ACTION:**  
**Breach of Contract (DoubleClick Ad Exchange Agreement,  
 DoubleClick Advertising Agreement, and AdWords Agreement)  
 by Plaintiffs against Google  
 (Class Action Claim)**

243. Plaintiffs hereby re-incorporate and re-allege all the preceding paragraphs as if fully set forth herein.

244. Plaintiffs bring this claim of breach of the DoubleClick Ad Exchange Agreement, breach of the DoubleClick Advertising Agreement, and breach of the AdWords Agreement, on behalf of themselves and all members of the Advertiser Class.

245. AdTrader and the other members of the Advertiser Class, had entered into the DoubleClick Ad Exchange Agreement, the DoubleClick Advertising Agreement, and/or the AdWords Agreement.

246. SCB had entered into the AdWords Agreement.

247. Classic, LML, Ad Crunch, and Fresh Break were third-party beneficiaries of the DoubleClick Ad Exchange Agreement, the DoubleClick Advertising Agreement, and the AdWords Agreement. As previously alleged in greater detail, Google is aware that advertising agencies and advertising networks like AdTrader buy ad space on behalf of their advertising clients. Furthermore, Google knows exactly who all of AdTrader's advertising clients are, because AdTrader is required to separately register them in DBM. When Google issues DBM invoices, each of AdTrader's advertising clients are identified by name and by a unique ID number.

248. Plaintiffs, and the other members of the Advertiser Class, had substantially performed under the DoubleClick Ad Exchange Agreement, the DoubleClick Advertising Agreement, and/or the AdWords Agreement. The key requirements of those contracts were that Plaintiffs, and the other members of the Advertiser Class, (i) provided advertisements that complied with Google's policies and regulations and (ii) paid Google in timely fashion after

1 Google invoiced them for its services. Plaintiffs, and the other members of the Advertiser Class,  
2 met both of these obligations at all times.

3 249. As previously alleged in greater detail, Google represented to Plaintiffs, and all  
4 other members of the Advertiser Class, that it performed “offline analysis” of its advertising  
5 networks to ascertain whether any clicks on an advertisement were invalid. Google also  
6 represented to Plaintiffs, and all other members of the Advertiser Class, that it would refund or  
7 give credits to them for invalid impressions or clicks.

8 250. As previously alleged in greater detail, Google’s representations were made to  
9 Plaintiffs, and all other members of the Advertiser Class when they first entered into the  
10 DoubleClick Ad Exchange Agreement, the DoubleClick Advertising Agreement, and/or the  
11 AdWords Agreement, and were continually reaffirmed by Google afterwards.

12 251. Google has also informed every single AdX publisher from whom it confiscates  
13 their accrued earnings that those confiscated funds were supposedly “refunded” or “returned”  
14 back to advertisers. Furthermore, the words “refund” or “return,” as opposed to “credit,” is  
15 specifically chosen by Google, as it is emphasizing to the disaffected publisher that the money is  
16 already gone and is irretrievable.

17 252. Google also admitted in a statement to the media after the filing of this lawsuit that  
18 it has a “longstanding policy of refunding advertisers for invalid traffic.”

19 253. The DoubleClick Advertising Agreement does not have any express language  
20 relating to the parties’ obligations when Google discovers that its advertisers had spent money on  
21 websites Google determined to have had fraudulent or invalid traffic. Accordingly, Google’s  
22 promise that it would refund or provide credits to advertisers in such circumstances (which was  
23 repeated after the parties entered into this contract), as well as its frequent statements to the public  
24 that it does indeed provide such refunds, is extrinsic evidence demonstrating that the parties  
25 understand that Google has an obligation under that contract to provide refunds to advertisers for  
26 invalid impressions or clicks. In the alternative, Google’s actions reveal that the obligation to  
27 provide such refunds is either an implied term of the contract, or is a modification of the contract  
28 as a result of Google’s subsequent conduct.



1           254. The DoubleClick Ad Exchange Agreement has express language addressing the  
2 parties' obligations specifically for (i) click fraud (ii) that is detected through a reactive  
3 investigation. This agreement also requires that Google exercise "reasonable discretion" in  
4 issuing advertising credits. There is no express language regarding the parties' obligations when  
5 Google discovers through its "offline" investigations that its advertisers have spent money on  
6 invalid traffic (that did not constitute click fraud). Accordingly, Google's promise that it would  
7 refund or provide credits to advertisers in such circumstances (which was repeated after the  
8 parties entered into this contract), as well as its frequent statements to the public that it does  
9 indeed provide such refunds, is extrinsic evidence demonstrating that the parties understand that  
10 Google has an obligation under that contract to provide refunds to advertisers for invalid  
11 impressions or clicks. In the alternative, Google's actions reveal that the obligation to provide  
12 such refunds is either an implied term of the contract, or is a modification of the contract as a  
13 result of Google's subsequent conduct. Moreover, Google's repeated promises have also resulted  
14 in a modification of the contract with respect to the parties' obligations specifically for (i) invalid  
15 traffic (ii) that is detected through offline analysis.

16           255. The AdWords Agreement has express language addressing the parties' obligations  
17 specifically for (i) click fraud (ii) that is detected through a reactive investigation. This  
18 agreement also requires that Google exercise "reasonable discretion" in issuing advertising  
19 credits. There is no express language regarding the parties' obligations when Google discovers  
20 through its "offline" investigations that its advertisers had spent money on invalid traffic (that did  
21 not constitute click fraud). Accordingly, Google's promise that it would refund or provide credits  
22 to advertisers in such circumstances (which was repeated after the parties entered into this  
23 contract), as well as its frequent statements to the public that it does indeed provides such refunds,  
24 is extrinsic evidence demonstrating that the parties understand that Google has an obligation  
25 under that contract to provide refunds to advertisers for invalid impressions or clicks. In the  
26 alternative, Google's actions reveal that the obligation to provide such refunds is either an implied  
27 term of the contract, or is a modification of the contract as a result of Google's subsequent  
28 conduct. Moreover, Google's repeated promises have also resulted in a modification of the

1 contract with respect to the parties' obligations specifically for (i) invalid traffic (ii) that is  
2 detected through offline analysis.

3 256. As previously alleged in greater detail, Google breached all of these contracts  
4 because it does not provide full credits or refunds to advertisers for impressions or clicks that  
5 Google has represented to its publishers as having been fraudulent or otherwise invalid. Further,  
6 where "reasonable discretion" to issue advertising credits is given under the contracts to Google,  
7 Google breached these contracts by exercising that discretion in an objectively unreasonable  
8 manner.

9 257. And as revealed in the August 25, 2017 Wall Street Journal article, Google is  
10 refunding to its advertisers only 7-10% of the amounts they paid to Google for advertisements  
11 that were served to invalid traffic rather than the entire amount. In fact, even Google's stated  
12 reason for limiting refunds to 7-10% of the total amount spent – that Google "doesn't control the  
13 rest of the money spent" – is itself false, as Google confiscated all of the accrued earnings of  
14 AdTrader, as well as other AdX publishers, whenever it accuses them of having invalid activity  
15 on their websites. Moreover, as previously alleged in greater detail, a majority of all advertising  
16 expenditures made through DBM is directed by Google to AdX.

17 258. As a proximate result of Google's breaches of the contracts, Plaintiffs, and the  
18 other members of the Advertiser Class, have been damaged by not receiving the refunds or credits  
19 owed to them by Google.

20 **ELEVENTH CAUSE OF ACTION:**  
21 **Breach of the Implied Covenant of Good Faith and Fair Dealing (DoubleClick Ad Exchange**  
22 **Agreement, DoubleClick Advertising Agreement, and AdWords Agreement)**  
**by Plaintiffs against Google**  
**(Class Action Claim)**

23 259. Plaintiffs hereby re-incorporate and re-allege all the preceding paragraphs as if  
24 fully set forth herein.

25 260. Plaintiffs bring this claim for breach of the implied covenant of good faith and fair  
26 dealing, on behalf of themselves and all members of the Advertiser Class, in the alternative  
27 should the Court find that the DoubleClick Ad Exchange Agreement, the DoubleClick  
28

1 Advertising Agreement, or the AdWords Agreement do not impose an express contractual  
2 obligation by Google to give refunds or credits to its advertisers for invalid clicks.

3 261. As previously alleged in great detail, Plaintiffs, and the other members of the  
4 Advertiser Class, entered into the DoubleClick Ad Exchange Agreement, the DoubleClick  
5 Advertising Agreement, and/or the AdWords Agreement (or were third-party beneficiaries of  
6 those contracts), and substantially performed under these contracts.

7 262. There exists in every contract, including Google's contracts with AdTrader and  
8 other members of the Advertiser Class, an implied covenant of good faith and fair dealing,  
9 requiring that each party not do anything to unfairly interfere with the right of the other party to  
10 receive the benefits of the contract.

11 263. Google breached the implied covenant of good faith and fair dealing by unfairly  
12 interfering with Plaintiffs and the other members of the Advertiser Class's right to receive the  
13 benefits of the contracts at issue.

14 264. As previously alleged in greater detail, Google does not provide full credits or  
15 refunds to advertisers for impressions or clicks that Google has represented to its publishers as  
16 having been fraudulent or otherwise invalid.

17 265. And as revealed in the August 25, 2017 Wall Street Journal article, Google is  
18 refunding to its advertisers only 7-10% of the amounts they paid to Google for advertisements  
19 that were served to invalid traffic rather than the entire amount. In fact, even Google's stated  
20 reason for limiting refunds to 7-10% of the total amount spent – that Google “doesn't control the  
21 rest of the money spent” – is itself false, as Google confiscated all of the accrued earnings of  
22 AdTrader, as well as other AdX publishers, whenever it accuses them of having invalid activity  
23 on their websites. Moreover, as previously alleged in greater detail, a majority of all advertising  
24 expenditures made through DBM is directed by Google to AdX.

25 266. Where discretion is given under the contracts to Google, it violated the implied  
26 covenant by exercising that discretion to issue credits to Plaintiffs and other members of the  
27 Advertiser Class in an arbitrary and unfair manner. For example, after disabling AdTrader's  
28 NPM publisher account and withholding \$476,622.69 in accrued earnings for supposedly invalid

1 activity, AdTrader and its advertising partners never received any credits or refunds through  
 2 DBM from Google for invalid clicks or impressions even though they had advertised on  
 3 AdTrader's publisher's websites during that same period of time. Similarly, on information and  
 4 belief, SCB never received full refunds or credits through AdWords either. And as revealed in  
 5 the August 25, 2017 Wall Street Journal article, Google is refunding to advertisers only 7-10% of  
 6 the amounts they paid to Google for advertisements that were served to invalid traffic, rather than  
 7 the entire amount. Moreover, as recounted by various advertising agencies to AdTrader, none of  
 8 them had ever received a refund or credit for invalid activity on ad buys made through DBM even  
 9 though Google withheld millions of dollars every earnings period from those same AdX  
 10 publishers for supposedly invalid activity. The implied covenant of good faith and fair dealing  
 11 must be implied with respect to Google's discretion, because if the provisions were read literally,  
 12 Google's bad faith refusal to provide credits to advertisers for invalid clicks on their  
 13 advertisements would frustrate the actual benefits of the contracts and render them illusory.

14 267. As a proximate result of Google's breaches of the implied covenant, Plaintiffs, and  
 15 the other members of the Advertiser Class, have been damaged by not receiving the refunds or  
 16 credits owed to them by Google.

17 **TWELFTH CAUSE OF ACTION:**  
 18 **Breach of Implied Duty to Perform with Reasonable Care (DoubleClick Ad Exchange**  
 19 **Agreement and AdWords Agreement)**  
 20 **by Plaintiffs against Google**  
 21 **(Class Action Claim)**

22 268. Plaintiffs hereby re-incorporate and re-allege all the preceding paragraphs as if  
 23 fully set forth herein.

24 269. Plaintiffs bring this claim for breach of implied duty to perform with reasonable  
 25 care, on behalf of themselves and all members of the Advertiser Class, in the alternative should  
 26 the Court find that the DoubleClick Ad Exchange Agreement or the AdWords Agreement do not  
 27 impose an express contractual obligation by Google to give refunds or credits to its advertisers for  
 28 invalid clicks or impressions. Plaintiffs also bring this claim in the alternative should it turn out  
 that, in fact, Google does have "a longstanding policy of refunding advertisers for invalid traffic"

1 as it publicly stated in response to this lawsuit. And even if the Court finds that the contract does  
2 impose the aforementioned express contractual obligations upon Google, then Plaintiffs bring this  
3 claim in the alternative so that they can elect between contract and tort remedies against Google.

4 270. As previously alleged in greater detail, Plaintiffs and the other members of the  
5 Advertiser Class entered into the DoubleClick Ad Exchange Agreement, and/or the AdWords  
6 Agreement (or were third-party beneficiaries to those contracts), and substantially performed  
7 under these contracts.

8 271. Google's obligations to Plaintiffs and other members of the Advertiser Class can  
9 be determined by reference not only to Google's various contracts with advertisers, but also to  
10 various webpages created by Google, including: an article titled "Google's Protection against  
11 Invalid Clicks" posted in Google's "Ad Traffic Quality Resource Center" (Exhibit 7); an article  
12 titled "Understanding credits and adjustments to your account" posted on Google's "Search  
13 AdWords Help" site (Exhibit 8); an article titled "How does Google prevent invalid activity?"  
14 posted on Google's "Traffic Quality" site (Exhibit 6); and an article titled "Invalid click credits"  
15 posted on Google's "Inside AdWords," which Google describes as its "official blog for news, tips  
16 and information on AdWords." (Exhibit 9.)

17 272. Google's obligations to Plaintiffs and other members of the Advertiser Class can  
18 also be determined by reference to its course of dealing with the Advertiser Class. Assuming the  
19 truth of its statement that it has a "a longstanding policy of refunding advertisers for invalid  
20 traffic," then Google has been providing refunds (or credits) to at least some advertisers during  
21 the applicable Class Period, even if those refunds/credits are not as complete as they should have  
22 been.

23 273. Google had an obligation to proactively monitor for and identify invalid clicks and  
24 impressions on advertisements purchased by Plaintiffs and other members of the Advertiser  
25 Class, and to provide refunds or credits to the Advertiser Class for such invalid activity. These  
26 obligations are implied by language in Google's contracts with advertisers referencing the fact  
27 that Google monitored clicks and impressions on advertisements and based its charges to the  
28 Advertiser Class on those clicks and impressions. In addition, Google's Ad Traffic Quality

Resource Center—which “serve[s] as the single source for all click fraud and ad traffic quality related information”—states that Google undertakes “**proactive monitoring of both advertiser and publisher networks**”; that it “**carefully monitors all clicks and impressions on ads**”; and that “**[w]hen invalid activity is found through offline analysis and reactive investigation, we mark those clicks as invalid and issue credits to any advertisers affected by this activity.**” (Exhibit 7 (emphasis added).) Further, in an AdWords Help article, Google states regarding “invalid activity” that it “prohibit[s] this kind of bad behavior. And **that’s why you don’t have to pay for these unfair clicks and impressions.**” (Exhibit 8 (emphasis added).) Google states on another Ad Traffic Quality webpage that: “When we find something wrong, we try to make it right as soon as possible. We suspend or disable invalid accounts, and may withhold payments to the publisher. When appropriate and possible, **that money is credited back to the advertisers** – not only for the month where we found the invalid activity, but often for the previous month, as well.” (Ex. 6 (emphasis added).) Reiterating these obligations, Google’s Inside AdWords blog states that “our team **proactively identifies invalid activity that may not have been automatically filtered and credits advertisers accordingly.**” (Ex. 9 (emphasis added).)

Moreover, after this lawsuit was filed, a Google representative admitted to a United Kingdom publication that “Google has a longstanding policy of refunding advertisers for invalid traffic.”

274. Under California law, Google was required to perform its contractual obligations competently and with reasonable care. Google breached these duties by failing to accurately monitor for and identify invalid impressions or clicks and by refusing to provide credits for invalid clicks to Plaintiffs and other members of the Advertising Class. As previously alleged in greater detail, Google does not provide full credits or refunds to advertisers for clicks that Google has represented to its publishers as having been fraudulent or otherwise invalid. And as revealed in the August 25, 2017 Wall Street Journal article, Google belatedly discovered a surge of ad fraud during the second quarter of 2017 on DBM for which it had charged advertisers, but rather than offer full refunds or credits to those advertisers, offered to reimburse only about 7-10% or less paid by those advertisers. Moreover, as recounted by various advertising agencies to AdTrader, none of them had ever received a refund or credit for invalid activity from ad buys

1 made through DBM even though Google withheld millions of dollars every earnings period from  
2 those same AdX publishers for supposedly invalid activity.

3 275. Had Google used reasonable care in performing its obligations, it would have not  
4 charged the Advertiser Class for these invalid clicks and impressions, or at the very least, would  
5 have provided full refunds or credits for those invalid clicks and impressions.

6 276. As a proximate result of Google's breaches of its obligations, Plaintiffs, and the  
7 other members of the Advertiser Class, have been damaged by not receiving the refunds or credits  
8 owed to them by Google.

9 **THIRTEENTH CAUSE OF ACTION:**

10 **Unjust Enrichment**  
11 **by Plaintiffs against Google**  
12 **(Class Action Claim)**

13 277. Plaintiffs hereby re-incorporate and re-allege all the preceding paragraphs as if  
14 fully set forth herein.

15 278. Plaintiffs bring this claim of unjust enrichment, on behalf of themselves and all  
16 members of the Advertiser Class, in the alternative should the Court find that the DoubleClick Ad  
17 Exchange Agreement, the DoubleClick Advertising Agreement, or the AdWords Agreement do  
18 not impose a contractual obligation by Google to give refunds or credits to its advertisers for  
19 invalid clicks.

20 279. As previously alleged in greater detail, Google represented to Plaintiffs, and all  
21 other members of the Advertiser Class, that it performed "offline analysis" of its advertising  
22 networks to ascertain whether any clicks on an advertisement were invalid. Google also  
23 represented to AdTrader, and all other members of the Advertiser Class, that it would refund or  
24 give credits to them for invalid impressions and clicks.

25 280. As previously alleged in greater detail, Google's representations were made to  
26 Plaintiffs, and all other members of the Advertiser Class when they first entered into the  
27 DoubleClick Ad Exchange Agreement, the DoubleClick Advertising Agreement, and/or the  
28 AdWords Agreement, and was continually reaffirmed by Google afterwards.



1           281. As previously alleged in greater detail, Google's representation was false because  
2 it does not provide full credits or refunds to advertisers for clicks that Google has represented to  
3 its publishers as having been fraudulent or otherwise invalid. AdTrader and its advertising clients  
4 have never received any credits or refunds for invalid clicks or impressions for ads placed through  
5 DBM, even though (i) Google disabled AdTrader's NPM publisher account and withheld  
6 \$476,622.69 in accrued earnings for supposedly invalid activity and (ii) every month, Google  
7 would adjust AdTrader's accrued earnings (or the earnings of AdTrader's publisher clients  
8 accrued on their individual AdX or AdSense accounts) by a small amount to reflect deductions  
9 for supposedly invalid activity.

10           282. And as revealed in the August 25, 2017 Wall Street Journal article, Google is  
11 refunding to its advertisers only 7-10% of the amounts they paid to Google for advertisements  
12 that were served to invalid traffic rather than the entire amount. In fact, even Google's stated  
13 reason for limiting refunds to 7-10% of the total amount spent – that Google "doesn't control the  
14 rest of the money spent" – is itself false, as Google confiscates all of the accrued earnings of  
15 AdTrader, as well as other AdX publishers, whenever it accuses them of having invalid activity  
16 on their websites. So while Google is claiming to publishers that it cannot pay out the entirety of  
17 their accrued earnings because such amounts have already been refunded to advertisers, it is  
18 simultaneously claiming to advertisers that it is able to refund them only a fraction of that  
19 amount. Google appears to be keeping the difference for itself.

20           283. Google has been unjustly enriched by keeping for itself all advertising funds that  
21 were spent on invalid traffic instead of refunding those amounts back to Plaintiffs and the other  
22 members of the Advertiser Class.

23           284. Plaintiffs and the other members of the Advertiser Class are accordingly entitled to  
24 restitution equal to the amount of funds that Google refused to pay out to its AdX and AdSense  
25 publishers, but that Google kept for itself instead of refunding back to AdTrader and the other  
26 members of the Advertiser Class.

27           285. Furthermore, should it be determined that advertising agencies or advertising  
28 networks globally lack standing to bring any claims against Google, then their advertising clients

1 such as Classic, LML, Ad Crunch, and Fresh Break still have an unjust enrichment claim against  
 2 Google. This is because these advertising clients did not have their own contracts with Google,  
 3 their funds were paid to Google to display advertisements on AdX publisher websites, and it is  
 4 unjust for Google to retain any such funds when Google had internally flagged those particular  
 5 websites as having invalid traffic of any kind and withheld the accrued earnings of those AdX  
 6 publishers.

7 **FOURTEENTH CAUSE OF ACTION:**  
 8 **Unfair Competition Law**  
 9 **by Plaintiffs against Google**  
 10 **(Class Action Claim)**

11 286. Plaintiffs hereby re-incorporate and re-allege all the preceding paragraphs as if  
 12 fully set forth herein.

13 287. Plaintiffs bring this claim under California's Unfair Competition Law ("UCL"),  
 14 California Business & Professions Code §§ 17200, et seq., on behalf of themselves and all  
 15 members of the Advertiser Class. This claim, however, is not related in any way to the  
 16 DoubleClick Advertising Agreement.

17 288. Google has engaged, in and continues to engage in, unlawful, fraudulent, and  
 18 unfair business acts and practices prohibited by the UCL. As previously alleged in greater detail,  
 19 despite promising to do so, Google repeatedly and systematically refused to provide full credits or  
 20 refunds to advertisers for invalid impressions or clicks on their ads, while simultaneously  
 21 withholding payments to the publishers who displayed those ads. Google instead simply  
 22 pocketed the money.

23 289. Google's acts and practices implicate the public in general and individual  
 24 consumers in that they were based on representations that were distributed widely on the Internet  
 25 and directed at thousands of individuals and businesses of all types and sizes looking to engage in  
 26 online advertising, and misled these consumers as to the value of advertisements they purchased  
 27 through Google. In addition, Google's acts and practices have deprived its advertisers of money  
 28 or credits – totaling hundreds of millions, or even billions, of dollars – that they would have spent  
 on ads targeting end consumers interested in their products or services. Thus, the interests of

1 individual consumers are also implicated because end consumers and Internet users were  
2 deprived of ads that cater to their interests. The decrease in advertising expenditures also, in turn,  
3 leads to a decrease in the number of publishers offering free content for consumers on the  
4 Internet.

5 290. Google's actions and systematic conduct towards Plaintiffs and the other members  
6 of the Advertiser Classes constitute unlawful business practices towards them within the meaning  
7 of California Business & Professions Code § 17200. As previously alleged in greater detail,  
8 Google's acts and conduct constitute fraud, negligent misrepresentation, theft by deception under  
9 California Penal Code § 496(c), breach of contract, breach of the implied covenant of good faith  
10 and fair dealing, breach of the implied duty to perform with reasonable care, and/or unjust  
11 enrichment.

12 291. Google's actions and systematic conduct towards Plaintiffs and the other members  
13 of the Advertiser Class constitute unfair business practices towards them within the meaning of  
14 California Business & Professions Code § 17200. As previously alleged in greater detail, despite  
15 promising to do so, Google repeatedly and systematically refuses to provide credits or refunds to  
16 advertisers for invalid impressions or clicks on their ads, while simultaneously withholding  
17 payments to the publishers who displayed those ads. Google instead simply pockets the money.  
18 Such practices are deemed unfair under the UCL. In addition, Google's conduct is immoral,  
19 unethical, oppressive, and unscrupulous in that Google wrongfully confiscates money that it  
20 promised to return to advertisers. Google's conduct is also substantially injurious to consumers,  
21 as previously alleged in greater detail.

22 292. Google's actions and systematic conduct towards Plaintiffs and the other members  
23 of the Advertiser Class constitute fraudulent business practices towards them within the meaning  
24 of California Business & Professions Code § 17200. As previously alleged in greater detail,  
25 Google repeatedly and fraudulently represented that it would issue full refunds or credits to  
26 advertisers for impressions or clicks on their ads that were determined to be fraudulent or invalid.  
27 Google's representations were likely to deceive a reasonable consumer. In addition, as previously  
28 alleged in greater detail, Plaintiffs actually relied on Google's misrepresentations, as those

1 misrepresentations were an immediate cause of their decision to maintain or increase their  
2 advertising expenditures on AdX publisher websites.

3 293. Plaintiffs, and the members of the Advertiser Class are accordingly entitled to  
4 restitution and injunctive relief as a remedy for Google's violations of the unfair competition law.

5 **FIFTEENTH CAUSE OF ACTION:**  
6 **Violation of the New York General Business Law § 349**  
7 **by AdTrader against Google**  
8 **(Class Action Claim)**

9 294. Plaintiffs hereby re-incorporate and re-allege all the preceding paragraphs as if  
10 fully set forth herein.

11 295. AdTrader brings this claim on behalf of itself and all members of the DoubleClick  
12 Advertising Agreement Sub-Class under New York General Business Law § 349, which provides  
13 that "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the  
14 furnishing of any service in this state are hereby declared unlawful."

15 296. The DoubleClick Advertising Agreement was executed by an authorized signatory  
16 of Google's DoubleClick division, which is located in New York.

17 297. As previously alleged in greater detail, Google engaged in deceptive acts and  
18 practices by representing to AdTrader and all other members of the DoubleClick Advertising  
19 Agreement Sub-Class that it performed "offline analysis" of its advertising networks to ascertain  
20 whether any clicks on an advertisement were invalid, and that it would refund or give credits to  
21 them for invalid impressions and clicks. Google's deceptive acts and practices occurred in part in  
22 New York because its DoubleClick Bid Manager service is provided through its DoubleClick  
23 division located in New York; the DoubleClick Advertising Agreement which governs  
24 advertisers' use of the DBM service contains a New York choice-of-law provision; and, on  
25 information and belief, Google's misrepresentations were made in or ratified by DoubleClick  
26 executives in New York to the extent they relate to DBM.

27 298. Google's deceptive acts and practices were consumer-oriented in that they were  
28 based on representations that were distributed widely on the Internet and directed at thousands of  
individuals and small businesses looking to engage in online advertising, including members of

1 the DoubleClick Advertising Agreement Sub-Class located in New York, and misled these  
2 individuals and businesses as to the value of advertisements they purchased through Google. In  
3 addition, Google's acts and practices have deprived its advertisers of money or credits – totaling  
4 hundreds of millions, or even billions, of dollars – that they would have spent on ads targeting  
5 end consumers interested in their products or services. Thus, the interests of individual  
6 consumers are also implicated because end consumers and Internet users were deprived of ads  
7 that cater to their interests. The decrease in advertising expenditures also, in turn, leads to a  
8 decrease in the number of publishers offering free content for consumers on the Internet.

9       299. Google's deceptive acts and practices were misleading in a material way because,  
10 when Google represented that it performed "offline analysis" for invalid clicks and that it would  
11 issue refunds or credits for invalid clicks, a reasonable consumer or small business would  
12 reasonably be misled into believing that Google would do what it said it would do.

13       300. AdTrader and the other members of the DoubleClick Advertising Agreement Sub-  
14 Class suffered injury as a result of Google's deceptive acts and practices. They lost money by  
15 having to pay Google for invalid clicks and impressions on their ads, and would not have paid for  
16 those advertisements, or as much as they did, had they known that Google would not issue them  
17 refunds or credits for those invalids clicks and impressions. As a result of Google's deceptive  
18 acts and practices, AdTrader and the other members of the DoubleClick Advertising Agreement  
19 Sub-Class did not obtain the value of the products or services for which they paid; were induced  
20 to pay more for products or services than they otherwise would have paid; and lost the ability to  
21 make informed and reasoned purchasing decisions.

22       301. AdTrader and the other members of the DoubleClick Advertising Agreement Sub-  
23 Class seek relief under N.Y. Gen. Bus. Law § 349(h), including but not limited to actual damages  
24 (to be proven at trial), treble damages, statutory damages, injunctive relief, and/or attorney's fees  
25 and costs.

**PRAYER**

**WHEREFORE**, Plaintiffs AdTrader, Inc., Classic and Food EOOD, LML CONSULT Ltd., Ad Crunch Ltd., Fresh Break Ltd., and Specialized Collections Bureau, Inc. pray for judgment as follows:

1. For judgment against defendant Google, LLC;
2. For compensatory and special damages;
3. For treble damages;
4. For punitive damages;
5. For declaratory relief;
6. For restitution;
7. For a permanent injunction;
8. For pre-judgment interest;
9. For attorney's fees and costs; and
10. For such other and further relief as the Court deems just and proper.

Dated: March 20, 2018

GAW | POE LLP

By: 

Randolph Gaw  
Attorneys for Plaintiffs AdTrader, Inc.,  
Classic and Food EOOD, LML  
CONSULT Ltd., Ad Crunch Ltd., Fresh  
Break Ltd., and Specialized Collections  
Bureau, Inc.

**JURY DEMAND**

Plaintiffs AdTrader, Inc., Classic and Food EOOD, LML CONSULT Ltd., Ad Crunch Ltd., Fresh Break Ltd., and Specialized Collections Bureau, Inc. hereby demand a jury trial for their claims against defendant Google, LLC.

Dated: March 20, 2018

GAW | POE LLP

By: 

Randolph Gaw  
Attorneys for Plaintiffs AdTrader, Inc.,  
Classic and Food EOOD, LML  
CONSULT Ltd., Ad Crunch Ltd., Fresh  
Break Ltd., and Specialized Collections  
Bureau, Inc.